TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 717.

AMERICAN BANK & TRUST COMPANY *ET AL.*,
APPELLANTS,

vs.

FEDERAL RESERVE BANK OF ATLANTA *ET AL.*

AL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

FILED DECEMBER 2, 1922.

(29,267)

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INDEX.

	Original.	Print.
Caption in U. S. circuit court of appeals	*a*	1
Record from superior court of Fulton County	1	1
Petition	1	1
Temporary restraining order	34	21
Amendment to petition	36	21
Demurrer of plaintiffs to petition for removal (omitted in printing)	37	
Petition of defendants for removal to the U. S. district court (omitted in printing)	39	
Notice of petition for removal (omitted in printing)	44	
Bond for removal (" " ")	46	
Order of removal (" " ")	49	
Amended petition for removal (" " ")	51	
Demurrer to amended petition for removal (omitted in printing)	54	
Clerk's certificate (omitted in printing)	56	
Record from U. S. district court for the northern district of Georgia	57	22

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	Original.	Print.
Amendment to petition	57	22
Exhibit A to Amendment—Letter, J. A. Pondrom to chairman and board of directors of Federal Reserve Bank of Dallas, Texas	66	27
Order allowing amendment	69	28
Answer of defendants	69	28
Amendment to prayers of original petition	107	50
Amendment to petition	109	51
Amended answer	112	53
Supplement No. 1	120	57
Alphabetical index to supplement No. 1	121	57
Extracts from minutes of board of directors' meetings of Federal Reserve Bank of Atlanta from October 19, 1914, through December 10, 1921, concerning par clearance	125	61
Correspondence of various Federal Reserve Banks *in re* par-clearance campaign	131	65
Supplement No. 2	257	136
Alphabetical index to supplement No. 2	258	136
Testimony of L. P. Pattillo	259	137
W. J. Stover	260	137
W. E. Greene, Jr	264	140
E. S. Strickland	269	143
W. I. Bennett	273	146
B. F. Rawles, Jr	284	153
Albert M. Tumlin	285	154
J. M. Slattery	293	159
P. R. Kittles	295	160
J. W. Cannon	303	166
E. V. Tidwell	304	167
Mark W. Monroe	307	168
L. C. Adelson	319	176
M. B. Wellborn	335	186
L. R. Adams	351	197
Plaintiffs' interrogatories and defendants' answers by M. B. Wellborn, Joseph A. McCord, L. C. Adelson, and M. W. Bell	353	198
Testimony of W. P. G. Harding	503	277
Harding Exhibit—Correspondence	552	306
Harding Exhibit No. 2—Letter of Federal Reserve Board, June 22, 1917, transmitting new issue of regulations of 1916	592	330
Harding Exhibit No. 3—Regulation J, series of 1917, of Federal Reserve Board	593	331
Stipulation as to evidence, rulings at trial, etc., and waiving disqualification of Sibley, J	599	334
Stipulation as to transcript	601	335
Extract from seventh annual report of Federal Reserve Board	603	336
Extract from Exhibit C to Interrogatories—Explanation of items of exchange paid	616	344

	Original.	Print.
Extract from Exhibit Z to Interrogatories—Extract from Bulletin G 161 of Federal Reserve Bank of Atlanta	618	345
Tabulation from annual report of superintendent of banks of Georgia	619	346
Tabulation of statistics of national banks	620	346
Order approving stipulation	624	349
Opinion, Evans, J.	625	349
Decree	628	351
Petition for appeal and order allowing same	631	352
Order granting supersedeas	633	353
Assignments of error	634	355
Intervening petition of Brookings State Bank *et al.* and order denying same	638	358
Extracts from testimony of George D. Wood	639	360
Extracts from testimony of Ernest Meek and Charles Rous	642	363
Meek Exhibit No. 1—Letter, H. F. Strater to E. Meek, December 23, 1919	649	370
Meek Exhibit No. 2—Bulletin of H. G. Davis to all banks and trust companies in Fourth Federal Reserve District *re* par check-collection facilities	650	371
Meek Exhibit No. 3—Article No. 3, general traffic circular No. 10 of American Railway Express Co.	651	372
Meek Exhibit No. 4—Indictment in case of Commonwealth of Kentucky *vs.* M. C. Magee in Boyd circuit court	652	373
Statement of testimony of H. Flood Madison	653	374
Madison Exhibit 2—Letter, H. Flood Madison to Hon. Joseph E. Ransdell, March 9, 1920	665	386
Exhibit to Madison Exhibit No. 2—Letter, Federal Reserve Bank of Dallas to Bastrop State bank	671	392
Madison Exhibit No. 3—Notice of dishonor	671	392
Madison Exhibit—Letter, H. Flood Madison to Hon. H. B. Conner, July 3, 1920	672	393
Statement of testimony of R. B. Clark	674	395
Clark Exhibits—Correspondence	674	395
Statement of testimony of William S. Craig	703	424
Craig Exhibit—Notice of dishonor	705	426
Statement of testimony of C. D. Waggoner	706	427
Nathan Benditzson	708	429
W. A. Deary	709	430
John B. Helpman	711	432
O. J. Irwin	712	433
W. H. Kuenzi	714	435
A. L. Norton	715	436
Norton Exhibit—Letter, Wm. C. Bachman to A. L. Norton, August 19, 1920	716	437

	Original.	Print.
Statement of testimony of N. L. Nower	718	439
L. C. Nunn	721	442
C. B. Paxton	723	444
J. W. Dale	725	446
A. Pohlman	726	447
A. J. Mastalir	727	448
R. L. Mallory	732	453
M. M. Inhelder	734	455
D. C. Deibler	735	456
Florian Fuchs	737	458
J. A. Poudron	740	461
A. K. Smith	741	462
Wm. Dangerfield Smith	741	462
Thomas C. Sunsted	744	465
E. O. Terry	745	466
L. P. Tonner	747	468
R. S. Wilfley	748	469
Index to rejected witnesses	750	471
Bond on appeal	751	472
Stipulation as to transcript and order approving same	752	473
Præcipe for transcript	754	473
Clerk's certificate	757	474
Argument and submission in C. C. A.	758	475
Opinion, Walker, J.	759	475
Judgment	765	478
Petition for and order allowing appeal	766	479
Assignments of error	768	480
Bond on appeal	776	486
Stipulation as to amount involved	778	487
Clerk's certificate	779	487
Citation and service	780	488
Stipulation as to parts of record to be printed	781	488

2 UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Caption.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit begun on the first Monday in October, A. D. 1922, at Atlanta, Georgia, before the Honorable Richard W. Walker and the Honorable Nathan P. Bryan, Circuit Judges, and the Honorable Wm. B. Sheppard, District Judge.

AMERICAN BANK & TRUST COMPANY et als., Appellants,

versus

FEDERAL RESERVE BANK OF ATLANTA et als., Appellees.

Be it remembered, That heretofore, to-wit, on the 6th day of July, A. D. 1922, a transcript of the record in the above styled cause, pursuant to an appeal from the District Court of the United States for the Northern District of Georgia, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3906, as follows, to-wit:

1 **Petition.**

[Title omitted.]

Superior Court of Fulton County, Georgia.

GEORGIA,
Fulton County:

To the Superior Court of said County:

Plaintiffs hereinafter named bring this petition against the defendants hereinafter named and allege the following facts:

1.

The plaintiffs herein are the American Bank & Trust Company, of Cordele, Crisp County, Georgia; The Pitts Banking Co., of Pitts, Ga., Bank of Sale City, Sale City, Ga.; The Bartow Bank, of Barrow, Jefferson County, Georgia; The Farmers Bank, of Abbeville, Ga.; Union Banking Co., of Alamo, Ga.; Bank of Newton County, of Covington, Newton County; Citizens Bank, of Helena, Ga.; Bank of Collins, at Collins, Georgia; Bank of Manchester, of Man-

chester, Meriwether County, Georgia; Farmers & Mer-
2 chants Bank, of Lumber City, Ga.; Farmers & Merchants Bank, of Jackson, Butts County, Georgia; The Farmers Bank of Jenkinsburg, and The Exchange Bank, of Cordele, Ga., who bring this suit in their own right and as representatives of a class hereinafter called "Country Bankers", who may be in like situation with the plaintiffs and make themselves parties plaintiff herein, as provided by law. Each of the plaintiffs above named is a banking corporation created and existing under the laws of the State of Georgia.

2.

The defendants are: The Federal Reserve Bank, of Atlanta, Georgia, a corporation created and existing under the laws of the United States and being the Federal Reserve Bank for the Sixth District of the Federal Reserve System of the United States, the principal office of which bank is in the City of Atlanta and said County, and the following natural persons in their individual capacity, who occupy the following official positions in said bank, to-wit: M. B. Wellborn, Governor of said Bank; L. C. Adelson, Deputy Governor of said Bank; M. W. Bell, Cashier of said Bank, and Joseph A. McCord, Chairman of the Board of Directors of said Bank. Each of said individual defendants is a resident of said County of Fulton.

3.

It has long been the policy of the State of Georgia, as disclosed in its Constitution and Laws, to foster, promote, regulate and encourage State banking institutions like those of the plain-
3 tiffs and to this and various and sundry statutes providing for the creation and regulation of said banks have been, from time to time, enacted by the State of Georgia. The importance of such institutions in the economic development of the business of the State became so great that the Constitution of the State was amended in due course during the year 1918 so as to authorize the creation of a separate and distinct department in the government of said State, known as the "Department of Banking of the State of Georgia." Pursuant to said constitutional authority, the Legislature of Georgia at its 1919 Session enacted a complete redraft of the banking laws of said State and provided for the creation of the Department of Banking of the State of Georgia and for the incorporation of banks and their regulations, as will fully appear from said Act of Legislature—August 16th, 1919. Your petitioners, plaintiffs herein, were prior to said enactment subject to the regulatory powers of the State of Georgia and since said enactment subject in all respects to the provisions of the law creating said Department of Banking. There are more than six hundred other banking institutions in the State of Georgia likewise subject to said departmental control and more than five hundred of said banking institutions are located in the smaller towns outside of the

centers of population and for the purpose of this petition are designated "Country Banks."

4.

The State of Georgia is essentially an agricultural state. The great bulk of its population reside outside of its larger cities and said Country Banks have grown up in response to the demand for banking facilities by the rural population and agricultural interests of the State. In order to provide for the organization of small banking institutions of this character, adjusted in size to the needs of the immediate community, the laws of said State authorize the organization of such a banking institution with a minimum paid-in capital stock of Fifteen Thousand Dollars. Such small banking institutions are enabled with such small capital to meet the requirements of their immediate communities and earn a fair return upon the capital invested, notwithstanding the small volume of their business, which would be wholly impossible if their capital requirements were larger and the consequent overhead expense and taxation added, creating a disproportion between the fixed charge and the volume of the business possible to such an institution located in a small community.

5.

The economic development of such outlying communities through the instrumentality of banking facilities demands the location of such institutions in close proximity to the patrons they serve. The volume of such business is relatively small. The character of security for the loans of such institutions, such as live stock, farm implements, growing crops, etc., is such as to require intimate personal knowledge by the officials of such institution in determining on such loans and close supervision in the matter of their collection and enforcement of such security. These facts explain the existence of the large number of such institutions in the State of Georgia, the majority of which operate on relatively small capital and successfully conduct their business, although it is relatively small in volume as to each institution. The aggregate of said business is large, however, and its beneficial effect on the economic development of the State is reflected in the large reductions of interest rates to the agricultural population of the State which have resulted in recent years and in the fact that the State of Georgia compares favorably with any State in the Union in its increase of wealth per capita and general business and agricultural prosperity.

6.

Petitioners are informed that the aggregate capital of the six hundred and odd state banks of Georgia is in round numbers $20,000,000.00 and the aggregate deposits in said institutions are at the present time estimated to be about $150,000,000.00. The average capital of said banks thus appears to be about $33,000.00 each and

all of said institutions, petitioners are informed and believe, are in a prosperous condition.

7.

One of the fundamental and important functions performed by the Commercial Banks in the use of checks payable on demand, drawn against deposits in said banks, which are used in commercial transactions in lieu of actual money. Petitioners are informed that the best estimates on the subject place the performance of checks as a medium of exchange, as compared with the use of actual currency, as twenty to one. Through this instrumentality the medium of exchange is thus increased twenty fold.

8.

The bank check is the instrument by which customarily a depositor seeks to withdraw his funds, or any part thereof, from the
6 bank. It is a draft or order on the bank requiring it to pay a sum named. The initial and primary obligation of the bank upon which such a check is drawn is to pay the same over its counter in current funds on demand, charging the amount of the same against the deposit account of the drawer of said check.

9.

A custom has grown up in the banking business, however, whereby a great majority of checks thus drawn against accounts are handled through banking channels in such a manner as that they reach the several banks upon which they are drawn through the mails by correspondence between the banks handling such checks. When checks are thus sent through the mails, a service is demanded of the bank upon which they are drawn in excess of the mere payment of such check, some of the elements of which may be thus enumerated:

A record must be made showing from whom said check was received and the amount thereof entered up in such record. The party transmitting said check not being a resident of the same place in which the drawee bank is located, expects a remittance of the proceeds of said check in funds available at the place of the sender's residence or else in New York exchange, which by universal custom has come to be current throughout the country. It thus becomes incumbent on the drawee bank to maintain at different financial centers funds which may be drawn upon to cover remittances necessary to cover proceeds of checks thus sent to it through the mails. These funds are maintained by such banks through the medium of deposits to its credit in banking institutions located in such
7 financial centers, which deposit account must be maintained in amounts adequate to meet the average necessities of said drawee bank. To maintain these balances against which such remittances drafts are drawn, the drawee bank must transmit funds

from time to time to such depositories and pay the cost of such transmission. In addition to this, the draft covering the proceeds of the check must be written up by competent clerical force and duly recorded on the records of said bank and properly charged to the account of such correspondent. And when the transaction is completed of record in the drawee bank, letters of remittance must be prepared by competent clerical force and postage paid for the return of such remittance to the correspondent through the mails.

10.

The services thus required in the drawee bank to handle checks drawn upon it and sent through the mails, as above described, necessarily increases its expenses of doing business. This service inures directly to the benefit of the payee or original recipient of said check and subsequent holders thereof by indorsement in regular course of business and is the primary means through which checks have come to be so large an element in the media of exchange in lieu of actual currency. In order to compensate for this service it has long been the universal custom of banks except in the matter of checks drawn between large financial centers to make a charge of a fraction of a per cent. of the amount of such checks, which is deducted from the proceeds thereof and is commonly called "exchange." The word "exchange" as here used should not be confounded with the meaning of the word as applied to drafts on funds in financial centers commonly called "exchange." The word "exchange," as applied to the charge for the service rendered in remitting checks through the mails, means compensation for such service. It is entirely proper that the expense involved in handling checks through mails and correspondent banks should be borne by the payees or indorsers of said checks (who receive the proceeds thereof) for the reason that said checks are issued in payment for merchandise or in settlement of other business transactions in which such payee enjoys the profits involved in their particular business and the compensation for the service rendered by the banks is a small but appropriate expense of doing such business and should be borne by the party receiving the profits thereon.

11.

Your petitioners are informed and so allege upon information and belief that the aggregate value of such service rendered by the Country Bankers in the State of Georgia would reach the total of a million dollars per annum.

12.

Petitioners are informed and so allege upon information and belief that the Atlanta Clearing House, which is an association of the largest banks in the City of Atlanta, the capital of the state, and the largest association of the kind in the state, charges $1.11 per

thousand dollars for such service in connection with checks handled through said Association, and your petitioners charge that said amount is substantially the correct estimate of the cost of said service.

9

13.

The customary charge of the Country Banks for said services is on the average about one-eighth of one per cent. on the amount involved, which covers the actual cost of the service rendered and about twelve and and one-half per cent. profit thereon.

14.

Your petitioners charge that compensation for said service constitutes one of the most important sources of revenue of the Country Banks and the continuation of the right to make such charge is essentially important to their continued prosperity and to the performance of their functions under the policy of the State of Georgia under which they are regulated, and to the performance of their functions in the general growth and prosperity of the rural communities of the State.

15.

In addition to the economic value of the service thus rendered and the enlargement of the use of such checks in the business of the country through correspondents, as above explained, the great hazards of handling so large a volume of transactions by the use of currency are avoided. Opportunities for theft and defalcation are reduced to a minimum and the expenses of transmission of actual currency, burglary insurance and the proper care and safeguarding of money are brought down to the lowest level.

16.

When a bank foregoes any charge for the collection and remittance service, hereinbefore described, and forwards draft to
10 cover the amount of any such checks so sent through the mails without any deduction for said service, the banking term employed in such a case is called "Remitting at Par."

17.

In a published statement from said defendant, Wellborn, it is claimed by him that of the 30,260 banks in the United States 26,315 are now remitting at par for checks sent through the mails. Of this number more than 7,500 are national banks who are compulsory members of the Federal Reserve System hereinafter described and have no discretion in the premises. The others have submitted to this plan either through becoming members or by rea-

son of the coercive measures to enforce submission hereinafter described. In view of the large number of state banks which have thus apparently surrendered at discretion to the demands of these powerful financial institutions, said Defendant Wellborn no doubt felt justified in predicting that the necessity to employ coercive measures in the Sixth Federal Reserve District would be obviated. Unless protected by the Courts the Country Banks in Georgia will be driven either to submit or go out of business for the reasons herein stated. Hence the protection of the Courts is now and hereby invoked.

18.

The Supreme Court of the United States decided the case of McCulloch vs. Maryland, 4th Wheaton, 316, that implicit in the provisions of the Federal constitution was included power in Congress to establish banks as a part of the fiscal machinery of the
11 general government. Following the financial exigencies incident to the Civil War, the Congress created a system of national banks nominally for the purpose of providing a national currency secured by United States bonds and incidentally to provide a market for the sale of bonds necessary to be floated by the government following the Civil War. Under the original National Banking Act and the amendments thereto, an immense system of National Banks has grown up and is at the present time made up of more than seventy-five hundred banks of the Union. These banks, being creatures of Congress, are, of course, subject to its control and regulation.

19.

The United States National Bank currency thus provided for and bottomed upon government bonds to be purchased and pledged by the National Banks to secure the same proved so inelastic in time of financial stress that financial panics resulted with more or less frequency, and in order to remedy this evil the Congress of the United States in 1913 enacted a law known as the Federal Reserve Act, which was designed to furnish an elastic currency to afford means of rediscounting commercial paper and to establish a more effective supervision of banking in the United States.

20.

Under this act the territory of the United States was divided into twelve districts and provision was made for the creation of a Federal Reserve Bank for each of said Districts, the defendant bank herein being the Federal Reserve Bank under said act for the Sixth District of the United States. A Federal Reserve bank organized
12 under said act is a corporate body made up of member banks, who are subscribers to and owners of capital stock of such reserve bank, the stockholders of each member bank being apportioned in accordance with its individual capital and surplus.

21.

All national banks are required to become members of the Federal Reserve Bank in the District in which such national bank is located.

22.

The act also makes provision for the voluntary acquisition of membership in said Federal Reserve banks by banks incorporated by special laws of the states, such, for instance, as the plaintiffs in this case; provided, however, that such state institutions shall have the minimum capital stock required of national banks, viz: $25,000.00 in a town or city of not over 3,000; not less than $50,000.00 in a town or city between 3,000 and 6,000 population; not less than $100,000.00 in a town or city between 6,000 and 50,000 population, and $200,000.00 minimum capital in cities with more than 50,000 population. In addition to the capital requirements above provided for, state institutions becoming members of a Reserve Bank are required to conform to those provisions of law imposed on National Banks prohibiting loans on their own stock or relating to withdrawal or impairment of capital and to the payment of unearned dividends and such institutions are subjected to the penalties of the criminal provisions of the National Banking Act and are required to make reports of their condition to the Federal Reserve Bank of which they become members.

13

23.

As a condition of membership, such a state institution is likewise subject to examination by the examiners approved by the Federal Reserve Board. Such State institutions are also required to subscribe to the capital stock of the Federal Reserve Bank on the same basis as National Banks are required to do. In becoming a member of the Federal Reserve Bank a State Bank is subject to the same limitations as to discount and loans as apply to National Banks and as to certifying checks drawn by its depositors. Except as thus modified, a State institution joining a Federal Reserve Bank retains its charter rights under the State creating it. State institutions are also authorized to withdraw from the Federal Reserve Bank under conditions therein named.

24.

The earnings of the Federal Reserve Banks, including the defendant Reserve Bank, after payment of their expenses of operation, are appropriated by said Act of Congress to the payment of six per cent. dividend to their stockholders and the excess thereof to be divided one-half to the United States Government and the other half to the creation of the surplus until such surplus equals forty per cent. of the capital of such reserve bank and thereafter all earnings, in excess of six per cent., to stockholders, are payable to the United States Gov-

ernment to be used in its Treasury for specific purposes enumerated in the act.

25.

Even upon liquidation of a Reserve Bank its assets over and above its liability to stockholders become the property of the United
14 States and all property of such reserve banks is at all times exempted from all taxation.

26.

Said Federal Reserve Act creates a Federal Reserve Board, which is given general supervision over all Federal Reserve Banks and their member banks, including the rights to suspend reserve requirements, to levy a tax on the amount by which such reserves are reduced when suspended or upon any deficiency of the reserve to secure Federal Reserve notes; to supervise and regulate the issuing and retirement of Federal Reserve notes, to designate cities classified as "Reserve" and "Centralized Reserve" cities; to suspend any officer or director of any Federal Reserve Bank, to suspend the operation of any Federal Reserve Bank and take possession and administer its assets either for the purpose of liquidation or reorganization, to require bond of Federal Reserve agents, to grant special permits to National Banks to act as trustee, executor, administrator or registrar; and, generally, to exercise supervision over all Federal Reserve banks.

27.

Said Federal Reserve Act expressly recognizes the propriety of charging for the collection and remittances for checks through correspondents, as hereinbefore explained, but exempts all Federal Reserve banks, including the defendant Reserve Bank, from all such charges. Nothing in the act is held to prohibit member banks from charging for the extra expense incurred in collecting or remitting funds or exchange to its patrons, subject to regulations by the Federal Reserve Board, which Board is required to make and
15 promulgate from time to time regulations governing the transfer of funds and the charges therefor among the Federal Reserve Banks and their branches.

28.

The scope of such regulations and fixation of charges for collection and remittances are limited by the act to Federal Reserve banks and their members.

29.

Petitioners allege that under the provisions of said Federal Reserve Act it is an obvious conclusion that they were intended and designed by the Congress of the United States as improved ma-

chinery for the issuance and retirement of currency and the better regulation of the national banking system of the United States through a centralized governing body and thus improve the financial conditions necessary to the prosperity of the people of the United States and were not designed as money-making institutions, nor for the purpose of increasing the revenues of the United States Government at the expense of the banking and business interests of the country at large. In order to carry out this purpose and to prevent excessive earnings of such institutions beyond their necessities for operating expenses and a six per cent. dividend to their compulsory membership stockholders, the Federal Reserve Board is given full discretion to fix and vary from time to time the rates of interest and discount chargeable by said banks.

30.

Your petitioners allege on information and belief and from observation of the experience of said Federal Reserve banks
16 since their organization on the 1st of November, 1914, that the original design and purpose of said banks has been in a large measure perverted and their earning capacity has proven to be so great that a rivalry has sprung up between the officials of the Federal Reserve banks in the twelve districts of the United States to show large earnings on the business transacted by them.

31.

In order to further increase the earning power of said Reserve Banks, which is necessarily at the expense of the member banks in such federated institutions, the said defendant Reserve Bank, acting under the policy announced by the Federal Reserve Board, has determined to use its immense financial powers to compel the State institutions in the Sixth Federal Reserve District, or as many as possible thereof, including your petitioners and all other banks in like situation, to become members of said Federal Reserve Bank of said District. Some idea of the great financial power of defendant Reserve Bank may be obtained from the fact that, according to its statement of January 9, 1920, it held an amount of gold more than five times as much as the aggregate capital of all the country banks in Georgia. The published statement of defendant Reserve Bank at close of business January 9, 1920, shows a surplus of $1,695,000.00 on a capital of $3,429,400.00, or 136-9/10 per cent. A like percentage for all the twelve banks in the system at the same time was 137-3/10 per cent.

32.

Your petitioners are informed and charge the fact to be that less than two per cent. of the banking institutions created by the
17 State of Georgia, outside of its large cities, have voluntarily exercised their right to become members in said Federal

Reserve Bank. A very large percentage of them are not qualified for such membership without increasing their capital stock to a point which would make it impossible under their volume of business to pay taxes and dividends on it.

33.

Your petitioners allege on information and belief that the very small response to the invitation of the defendant Federal Reserve Bank to the institutions of this State to take out membership in it is a matter of disappointment to the officials of said bank who in their individual capacity are made parties defendant hereto. And petitioners allege on information and belief that said individual defendants have conspired and confederated together with the avowed purpose of using said immense financial power of the Federal Reserve Bank to compel the banking institutions of this State to take out membership in said Federal Reserve Bank and thereby for all practical purposes transfer their allegiance from the banking department of the State of Georgia to the highly centralized autocratic organization of the general government for the control of Federal Banks and to compel this action, regardless of its ruinous effect either upon the earning capacity of your petitioners' banks, and other banks of like situation, or of their ability to discharge the useful functions in the development of their local communities which they have hitherto been able to discharge with such signal success.

34.

Some time prior to December 23rd, 1919, the Federal Reserve Board at Washington was in receipt of a letter from some bank not a member of the Federal Reserve system protesting against the policy which had been adopted by the Federal Reserve banks, with the approval of the Federal Reserve Board, in the matter of collection at par of checks received by the Federal Reserve Bank, either from their member banks or from non-member banks maintaining clearing or collection accounts with them.

35.

In reply to said letter, the Federal Reserve Board wrote a letter defining its conception of the law and policy relative to the collection of bank checks and drafts at par. A copy of said letter from the Federal Reserve Board, in reply to said protest, is hereto attached and made a part of this petition and marked "Exhibit A" to which the usual leave of reference is prayed. After quoting and explaining their conception of the provisions of the Federal Reserve Act on the subject, the Federal Reserve Board announces in said letter the policy of ultimately establishing a universal or national system of clearing bank checks and drafts at par, and states that the one obstacle to the immediate inauguration of such a system is the ability of the small country banks to maintain balances with some city

correspondent by means of which checks deposited with them will be handled at par and through which they can remit to cover checks drawn on them through the mails in exchange, as hereinbefore fully explained.

19

36.

It will be noted in said letter that the Federal Reserve Board is of the opinion that but for this facility of doing business with institutions of their own selection by petitioners, and other banks in like situation, there is no doubt that many more of such banks would avail themselves of the privileges tendered by the Federal Reserve Banks.

37.

The Federal Reserve Board further make it clear that because the Federal Reserve Banks are exempted from all collection charges, they cannot inaugurate a system of universal par clearance, where non-member banks refuse to remit for their checks at par, and that therefore some other means of collecting such checks must be inaugurated no matter how expensive, claiming the right in a Federal Reserve Bank to incur unlimited expense in making such collections although it is prohibited from paying the nominal rate of exchange even of $1.00 per thousand.

38.

Said policy thus promulgated by the Federal Reserve Board was on December 23, 1919, formally announced by the Federal Reserve Bank of Atlanta, named as defendant herein purporting to act through its Governor, M. B. Wellborn; and in pursuance thereof the said defendant Wellborn, over his official signature, sent out to your petitioners, and, petitioners are informed, to all other non-member state banks in Georgia a letter of which a copy is hereto attached and made a part of this petition marked "Exhibit B."

20

39.

Exhibit A was enclosed under the same cover with Exhibit B and the map referred to in Exhibit B was also enclosed and the same will be to the Court shown, but it is of such character that it is not practicable to exhibit it to this petition and make it a part of the record. Said map discloses by a variety of colors that the States of Wisconsin, Minnesota, the two Dakotas, Arkansas, West Virginia and the eight South Atlantic and Gulf States east of Texas are the only states in the Union whose banks have stood out against the effort of the Federal Reserve Bank to centralize the business of the State Banks at Washington and compel them to abdicate for all practical purposes their local functions and allegiance to the states that created them.

40.

While Exhibit B contains a polite invitation to petitioners and other banks in like condition to voluntarily relinquish their sources of revenue in compensation for services rendered, as hereinbefore explained, and remit at par for all checks sent them through the mails, it nevertheless contains without any effort at concealment the plain threat that if this invitation is not accepted defendant would be forced to adopt other methods of collection that would prove embarrassing, annoying and expensive to petitioners and other banks in like condition. Said letter recognizes the burdens imposed by consenting to remit at par and as a sop to *Cerberus* offers to absorb the postage and expense charges, but leaving all other expense, clerical and otherwise, to be borne by petitioners and other banks
21 in like condition without compensation, unless petitioners choose to charge said expense to their local customer and depositor instead of having it paid, as now, by the dealers, manufacturers and merchants, who reap the profits from the transactions covered by said checks.

The depositors of petitioners and other country banks should not have this burden transferred to them because they enjoy the privilege of being credited at par in their deposit accounts all checks deposited by them and are supplied with exchange free of charge. To charge depositors at the rate of $1.11 per thousand for handling their checks through the mails, which is the established cost of such service, would be prohibitory, while distributing it to the payees of said checks puts a burden on nobody and facilitates the operation of small country banks by providing revenue to cover the cost of postage and clerical help necessary to handle checks through the mails as herein elsewhere explained.

41.

The offer contained in said letter—Exhibit B—to allow petitioners and other banks in like situation to open a non-member clearing account with defendant Reserve Bank is a studied effort to take away from the correspondent banks in the large cities in Georgia, with whom petitioners and other banks in like condition have dealt for years, their deposit accounts and centralize them in the Federal Reserve Bank. If this scheme succeeds, the large city banks in Georgia will see their deposit accounts shrink like the far-famed catfish. This proposed clearing account would necessitate the maintenance of a large increase of the reserves now carried by petitioner and other banks in like condition because the deposit items thereunder
22 would be carried by defendant Reserve Bank in suspense, or "Uncollected Funds Account," as it is called, until actually paid; whereas, under the present system obtaining between petitioners and their correspondents immediate credit subject to check is entered on receipt of such items.

42.

Petitioners are informed and believe and so charge that said items in transit, technically called the "float," are carried in suspense by the defendant Reserve Bank from date of receipt until the actual return of proceeds into the Federal Reserve Bank. The consequence is that petitioners would frequently appear to be overdrawn in such an account, although large credit balances would appear but for the suspense items afloat. Such a condition does not arise under petitioners' present method with their correspondents. Frequently the incoming checks technically called the "daily letter" are equalled or exceeded by items received through petitioners' deposit windows and the remittance draft covering the former is provided for by the immediate credit of the latter, both being carried to destination by the same mail. Thus the slack in reserve is always taken up; while under defendant's proposed clearing account it might easily happen that the float in suspense would equal the entire assets of a country bank and render it unable to meet its daily obligations.

43.

Petitioners deny the jurisdiction of the defendant Reserve Bank in its corporate capacity, and of each individual defendants under the cover of their official connection with it, over any bank
23 created by the sovereign state of Georgia, which has not voluntarily submitted to said jurisdiction, and less than one in fifty of such state banks outside of the large cities in the State have seen fit to take that step. There is very little inducement to join it by a bank with any choice in view of the policy of its management, which has transformed it into a money-making institution, entering into competition with its members on whose capital it operates. Petitioners are informed and charge the fact to be that it handles direct drafts with bills of lading attached and demands checks from drawees certified by their individual banks to pay for same, and requires its members to carry all reserves with it, thereby depriving them of all interest on balances. As a result of these practices petitioners are informed and charge the fact to be that defendant Reserve Bank made over 100 per cent on the capital furnished by its members during the year 1919 and its statement shows an average earnings of about 33⅓ per cent per annum since its organization clear of all expenses of its operation (the amount of which expenses does not appear in its statements), of which earnings only 6 per cent per annum is distributed to its members who furnish the capital. Regardless of the construction or interpretation of the Federal Reserve Act, petitioners are advised by counsel and therefore allege that Congress has no power even by a direct, explicit and mandatory enactment to coerce them or other state banks in like condition against their will to submit to the jurisdiction of defendant reserve bank, either as members or non-member banks. There is no warrant in law for perverting the Federal Reserve Act into an

instrument of autocratic tyranny to compel petitioners and other banks created by the State of Georgia to sacrifice their charter rights and legitimate revenues to fatten the swollen profits already piling up in the Federal Reserve Bank, which at present are about one and three-eighths times as great as their aggregate capital stock.

44.

Nevertheless, petitioners allege that said individual defendants, under the cloak of their official connection with the defendant Reserve Bank, threaten and intend to use the great resources of said Reserve Bank to compel petitioners and other banks in like condition to either join said Federal Reserve Bank, or else have their business so interfered with and their revenues so depleted by the embarrassing, annoying and expensive methods now in preparation for exploit upon them as to drive them out of business altogether. Petitioners have hereinbefore fully shown how and why a small country bank in a sparsely settled and remote agricultural section of the state cannot meet the requirements necessary to membership in the Federal Reserve Bank, nor can they deplete their revenues by remitting at par and continue the successful prosecution of their small, but useful and necessary business functions in their respective communities.

45.

Whether or not the defendant Reserve Bank will accept checks at par drawn on banks not holding membership in it is optional with it and not mandatory. The said bank has been in operation more than five years, and not until recently has it undertaken to handle checks on non-members at par, unless the drawee bank was located at a financial center of such size as to make it what is known as a "Par point."

46.

Petitioners are informed and believe and so charge that one of the embarrassing, annoying and expensive expedients to which the defendants intend to resort is to accumulate checks drawn on petitioners or other banks in like condition in the State of Georgia until the aggregate thereof is a large amount and then sending a special messenger to the counter of the bank on which said checks are drawn and demand payment thereof in currency over the counter. Such a course would inevitably drive a small country bank out of business. Without notice as to when such checks will be presented, or as to the amount thereof, it would be necessary for such bank to carry an amount of money in its vaults large enough to meet any emergency of this kind and would destroy its capacity to lend out said funds in regular course of business and therefore cause the loss of the interest revenues now derived from such loans. In addition to this, the appearance in a small village, or town, of a stranger and unknown person in an automobile, or other conveyance, and his

subsequent withdrawal under the eyes of the attendant and curious crowd of country people of large sums of currency from the local bank, the same to be carried away in the presence, perhaps, of many of the depositors of said bank, is calculated to, and in all probability would, result in an immediate run on said bank that would promptly put it out of business. The reputation of a bank is exceedingly sensitive, and any criticism or suspicion of it, whether well or ill-founded, speedily enlarges into distrust, condemnation and ruin.

26

47.

Petitioners allege that such method is useless, tyrannical, ultra vires the charter of said defendant Reserve Bank and the threat to employ such method petitioners allege to be a perversion, if not a prostitution of the functions of such a great institution. When such methods are employed for the purpose of coercing and oppressing petitioners and other banks in like condition created by the State of Georgia, it amounts to an outrageous invasion of the rights of your petitioners granted to them under the charter of the great State of Georgia.

48.

Nevertheless, the individual defendants freely admit that this method has been employed in other states to force unwilling state banks into line, and in view of their letter of December 23rd, petitioners charge that they expect to use this method on petitioners and other banks in like condition in Georgia, unless restrained from doing so by the strong arm of a Court of equity.

49.

Another embarrassing, annoying and expensive method which petitioners are informed and allege on information and belief that defendants expect to employ, as stated in said letter, is to hire a special agent in each town where petitioners, or other State banks in a like town do business, and mail checks on such local bank to said agent with instructions that he present same at the counter of the bank upon which same is drawn and demand payment in currency. Since this currency would necessarily have to be transmitted back to the defendant Reserve Bank and the cost
27 thereof paid by it, petitioners charge that such a method is employed for an ulterior purpose, rather than in good faith for the purpose of collecting said checks, and petitioners allege on information and belief and from the facts hereinbefore set forth, that said ulterior purpose is to coerce petitioners and other banks in like condition to bow to the will of defendants in the matter of remitting at par to cover their daily letters and ultimately to coerce petitioners and other banks in like situation to either join said Federal Reserve Bank or maintain a clearing deposit account with said bank, as hereinbefore fully explained. The evils of such a

method of collecting checks differ only in degree from those set forth in a preceding paragraph where said collection is made by a special messengers in automobiles, or other conveyances. The effect upon the constant maintenance of cash in vault to meet liabilities and the consequent material depletion of the reserves of petitioners in financial centers would be the same.

50.

Another embarrassing, annoying and expensive method which petitioners are informed and allege on information and belief that the defendants expect to employ in their effort to coerce submission of petitioners, and other banks in like condition, to submit to the jurisdiction of said Federal Reserve Bank, in the transmission of said checks to the local Postmaster, or through the express companies, for collection in currency over the counters of the bank on which they are drawn. Since the rates for such collections by express or postoffice remittance are equal to or greater than the rate of exchange now charged on remittances to cover such check,
28 the employment of such a method, petitioners allege to be in bad faith. The evils of having checks thus presented and paid in currency would be as great under this method as under either of the others, and would materially interfere with the successful prosecution of the legitimate business of petitioners and other banks in like condition, which they are now expressly authorized to do under their several charters from the State of Georgia.

51.

There may be other methods of oppression in preparation by defendants, designed to force submission of petitioners and other state banks of like condition to their will, of which petitioners are not informed, but petitioners allege that any method which disrupts the orderly course of business involved in the collection of checks through the mails would necessarily be ruinous to the business of petitioners and other banks in like condition if persisted in and would result in either the submission of petitioners or the abandonment of their business altogether under their state charters. In addition to this, the economic results of such method of doing business would be a tremendous injury to all the business interests in the state, including the business of petitioners and other banks in like situation. It is well known and the Court will no doubt take judicial cognizance of the fact that the relation of actual currency to bank transactions in the country as a whole is about one to twenty and any scheme which interferes with the orderly and continued course of such dealings clogs the channels of commerce, increasing the risk of doing business by handling large amounts of currency and added expense of insurance against burglary, theft and
29 defalcation, to say nothing of the loss of revenue caused by the disturbance of the ordinary reserves now necessary to

meet the requirements of the law regulating state banks and the necessities of the business of the banks themselves.

52.

Petitioners allege that the adoption of any of the methods hereinbefore described, or any like methods for the purpose of coercing petitioners, or other banks in like situation, to relinquish the revenue accruing to them by exchange on remittance, would operate to deprive petitioners and other banks in like condition of their property without due process of law in violation of that clause of the Fifth Amendment of the Constitution of the United States, which provides that no person shall be deprived of life, liberty or property without due process of law.

53.

Petitioners allege that, relatively speaking, the service of these small country banks to their respective communities is as necessary and important to those communities as are the services of larger institutions in populous cities included in the Federal Reserve System itself and the public policy of the State of Georgia as found in its Constitution and laws encourages the creation and activities of said small country banks. Of the 792 banks in the State of Georgia, petitioners are informed and believe that 610 are chartered by the State of Georgia, the others being National Banks. Of the 610 State Banks, petitioners are informed 510 are located outside of the large cities of the State and come within the classification of country banks. Of the 510 country banks, petitioners are informed that 224 have a capital stock of $20,000.00 or less and not one of these banks could meet the conditions necessary to membership to the Federal Reserve Bank without the increase of its capital stock to a point beyond which it could earn taxes and dividends thereon and such increase would in many cases be impossible and the additional stock could not be sold. On the other hand, petitioners are informed and believe and so allege that none of said small banks could successfully continue in business without the benefits of the compensation for their services for remittances covering checks as hereinbefore explained. Consequently, if the coercive schemes of the defendant are permitted to fructify, these small but useful and necessary State institutions will necessarily be driven out of business and the public policy, to say nothing of the local self-government, of the great State of Georgia will be outraged and overridden by the autocratic tyrran-y proposed to be exercised by the defendants hereto, operating in the name but outside the power of the defendant Reserve Bank created by Congress for a purpose entirely foreign to any such objects and purposes.

54.

Upon the receipt by petitioners and other banks in like situation in Georgia of said letter—Exhibit B—and its enclosures, all the re-

cipients declined to accede to the demand of defendants to remit at par and a committee was appointed to confer with the defendants on behalf of petitioners and other banks in like situation in an effort to accommodate the situation and persuade the defendants to recede from their efforts to compel compliance with their demands.

31 This committee conferred with the individual defendants herein named on more than one occasion and was informed on each occasion that the defendants intended to insist upon remitting at par or else would employ methods to compel such course on the part of petitioners or other banks in like situation; and stated that they were preparing their plans of action and would put them in operation as soon as they were completed.

55.

Petitioners are informed and believe and so charge that said individual defendants are now actively engaged in the preparation and perfection of plans which will put in operation said measures hereinbefore described or else other measures of like import, with the avowed object of compelling petitioners and other banks in like situation to accede to said demand. Said defendant—Bell, Cashier of the defendant Reserve Bank—delivered an address, as petitioners are informed, before the Rotary Club of Atlanta on the 5th day of January, 1920, in which he said "that the charging of exchange on checks and other instruments sent to various banks for collection is a vice which should be eradicated." And the said Bell, in co-operation with the other individual defendants named, in preparing measures to compel petitioners and other banks in like situation to forego said charges for exchange and the individual defendants advise petitioners and the Committee of Country Bankers representing petitioners and other banks in like situation that as soon as said plans are ready for operation they will be put into effect.

32 56.

Petitioners allege that said efforts to coerce petitioners and other banks in like situations through the instrumentality of said defendants Reserve Bank are illegal, oppressive and unwarranted by the charter powers and functions of said bank and that the efforts of said individual defendants in that direction are chargeable to them as individuals and constitute an invasion of petitioners' rights and the rights of other banks in like situation for the reasons hereinbefore fully stated. And it is necessary for the protection of said rights that said defendant Reserve Bank in its corporate capacity, and said individual defendants in their individual capacities should be restrained by the orders of this Court from further prosecution of their plans to forcibly and illegally coerce petitioners and other banks in like situation to accede to their demands or else suffer serious embarrassment, annoyance and expense in the conduct of their business.

57.

In case said coercive measures are employed, or any of them, the injury and damage to your petitioners and other banks would be irreparable and incapable of ascertainment in money and petitioners and other banks in like situation will be wholly remediless unless a Court of equity will intervene for their protection.

Wherefore, the premises considered and being without remedy at law, petitioners present this petition in their own behalf and in behalf of other banks in like condition and invoke the aid of a Court of equity in which alone they can find adequate relief since
33 the damages they would sustain by the alleged conduct of the defendants is wholly incapable of ascertainment, and thereupon respectfully pray:

1. That the defendants herein be served with the process of this Court as is usual in such cases.

2. That injunction both interlocutory and permanent be granted against said defendants and each of them, their officers, agents, attorneys, messengers, or other media of action preventing them from using, inaugurating or attempting to use, inaugurate or adopt any method of collecting checks drawn against petitioners or either of them would prove embarrassing, annoying and expensive to petitioners.

3. That injunction both interlocutory and permanent do issue against defendants and each of them, as aforesaid, enjoining them from collecting or attempting to collect any check against petitioners or against any other bank in like condition who may become a party hereto except in the usual and ordinary channel of collecting checks through correspondent banks or clearing houses, said channels being well established and well understood by defendants and all others familiar with the banking business.

4. That pending the hearing on said prayer for injunction, this Honorable Court may grant a restraining order as usual in such cases restraining the defendants and each of them, their agents and servants from adopting or attempting to adopt any method of collection of checks drawn against these petitioners, or against any bank
34 in like condition who may become a party hereto, in any manner that would prove embarrassing, annoying and expensive to the bank upon which such check is drawn, or in any manner other than the ordinary channels and processes for the collection of checks now in force and well understood in banking circles.

5. Petitioners further pray that the injunction and restraining order hereinbefore prayed for may be so worded as to prevent the defendants or either of them from in any manner interfering with petitioners or any other bank who may become a party hereto, from charging the usual and customary rate of exchange for compensation of service rendered in remitting for checks sent through the mail.

6. That petitioners may have such other and further relief in the premises as may be meet and proper.

And petitioners will ever pray. Smith, Hammond & Smith, Petitioners' Attorneys.

Temporary Restraining Order.

In Fulton Superior Court.

[Title omitted.]

The original petition in said case has been presented to the Court and read and sanctioned by the undersigned Judge thereof. Let said petition be filed and served as usual including this order.

35 The defendants will show cause before the Judge of said Court sitting in Chambers on the 24th day of January, 1920, at 9:30 o'clock A. M. or as soon as counsel can be heard why a temporary injunction should not issue as prayed.

In the mean time and until the hearing or further order of the Court the defendants and each of them, their agents and servants are restrained from employing and putting into execution any method of collecting checks drawn against petitioners or either of them, or against any other bank in like condition which is hereafter made a party plaintiff in this case, that would prove embarrassing, annoying or expensive to such banks; and from collecting such checks in any manner except in the usual and orderly way now employed among corresponding banks and clearing houses, and from interfering with any such bank in charging collecting or retaining the usual and customary rate of exchange charges now in effect between corresponding banks and clearing houses.

It is the sole and only object and purpose of this restraining order to preserve the existing status and method of collecting and remitting for checks through the mails by petitioners and other banks in like situation who may become party plaintiff in this case, until the matters complained of in this petition may be heard by the Court in regular course.

This January 15, 1920. W. D. Ellis, Judge S. C. A. C.

36–56 **Amendment to Original Petition.**

[Filed Jan. 19, 1920.]

Fulton Superior Court.

[Title omitted.]

Now comes the original plaintiffs in said case and amend their petition therein as follows:

Strike the words "Fifth Amendment of the Constitution of United States" in Paragraph 52 of said petition and insert in lieu thereof the words "third paragraph of the bill of rights of the Constitution of the State of Georgia." Smith, Hammond & Smith, Green F. Johnson, Plaintiffs' Attorneys.

Allowed this January 19th, 1920. W. D. Ellis, Judge S. C. A. C.
[File endorsement omitted.]

* * * * * * *

57 **Amendment to Original Bill.**

IN THE

District Court of the United States for the Northern District of Georgia.

[Title omitted.]

Without waiving the question of jurisdiction raised by the plaintiffs in said case by their motion to remand the same to the Superior Court of Fulton County, Georgia, plaintiffs ask leave to amend their original bill herein for the benefit of themselves and the class they represent, as follows, to-wit:

1. Section 13 provides that the reasonable charges to be made by the member and non-member banks shall be "determined and regulated by the Federal Reserve Board." By clear mandate of Congress, therefore, it is made the duty of the Federal Reserve Board to determine and regulate such reasonable charges for the collection and remission of proceeds of checks and drafts.

2. The proviso that "no such charges shall be made against the Federal Reserve Banks" can have no application to checks
58 held by the Reserve Banks for collection. Since the act of the agent is the act of the principal, the charge against the agent for the service rendered at the request of the agent for the benefit of the principal is a charge against the principal and not the agent.

3. Plaintiffs further allege that Section 13 authorizing and making it the duty of the Board to determine and regulate reasonable charges to be made by member and non-member banks, refers only to checks presented by the Federal Reserve Banks to member or to non-members which carry a balance with the Federal Reserve Bank, and not to checks presented directly to members or non-members through outside channels. This for the reason that the provision as to reasonable charges is enacted as a proviso to the first paragraph of Section 13 which refers only to checks received by the Federal Reserve Banks and not to checks received and presented through other channels. As to this latter, the common law right of the payor to make a reasonable charge for the service of remitting has not been regulated or limited in any way by the Federal Reserve Act if such limitation could be constitutionally made.

4. If it be contended that Section 16 requires the Federal Reserve Bank to account for such checks at par, that this would prohibit it from charging back to the owner the payor's reasonable charge for remitting the proceeds, the answer is that the amendment of Section

13, being later in point of time, would govern, and anything in conflict therewith would be impliedly repealed.

5. Plaintiffs further allege that there is no necessity for the Federal Reserve Bank to inaugurate any harsh and illegal methods of collecting checks on non-member banks. Its clearing house functions can be, and are being, exercised in a simple and practical way and entirely within the terms and provisions of the Federal Reserve Act.

6. Section 16 of said Act provides that member banks or non-member clearing depositors may charge their patrons for this service and requires them in turn to pay their Federal Reserve Bank or their fellow member bank, designated to perform such clearing house functions, the cost of collecting and clearing their checks. The Federal Reserve Board has so construed the law in paragraph 10, Regulation J, which is in the following language:

"The cost of collecting and clearing checks must necessarily be borne by the banks receiving the benefit and in proportion to the service rendered. An accurate account will be kept by each reserve bank of the cost of performing this service and the Federal Reserve Board will, by rule, fix the charge at so much per item, which may be imposed for the service of clearing or collection rendered by the reserve banks, as provided in section 16 of the Federal Reserve Act."

7. Plaintiffs allege on information and belief that the defendant, the Federal Reserve Bank, is actually sending out checks on non-member banks and authorizing collection charges to be deducted therefrom as is apparent from the following documents, to-wit:

(*a*) On or about February 10, 1920, the Jacksonville Branch of defendant, Reserve Bank, transmitted to the Hawthorne State Bank, of Hawthorne, Florida, six checks aggregating $138.27 and requested draft to cover, "giving us the best rate you can, if you feel you cannot remit at par". Signed W. G. Wilson, Cashier.

(*b*) Said Hawthorne Bank remitted to cover said checks as requested and charged 1/8 of one per cent exchange, the draft remittance being dated February 12, 1920, to order of "Federal Reserve Bank" for $137.92, on the Atlantic National Bank of Jacksonville, Florida, signed by W. C. Mahin, Cashier of said Hawthorne bank. Said draft was endorsed by an elliptical rubber stamp containing the words and figures: Jacksonville Branch Federal Reserve Bank of Atlanta, paid February 13, 1920, No. 19", and perforated with the words "Paid 2/13/20".

(*c*) On February 13, 1920, said Jacksonville Branch of defendant Federal Reserve Bank, transmitted to the Commercial Bank of Jasper, Florida, sixteen checks or cash items aggregating $895.35, and requested draft to cover, "giving us the best rate you can, if you feel you cannot remit at par". Signed W. G. Wilson, Cashier.

(*d*) Said Commercial Bank of Jasper, Florida, returned one of said items amounting to $15.00 and remitted to cover the remaining checks and cash items as requested and charged $1.10 exchange on the aggregate thereof, to-wit, $880.35, same being 1/8 of one per

cent thereof, the remittance draft being dated February 14, 1920, to order of Federal Reserve Bank, for $879.25, on Barnett National Bank, Jacksonville, Florida, and signed Hilda Register, Assistant Cashier of said Commercial Bank of Jasper, Florida, and said draft was paid February 16, 1920, bearing the endorsement of said Jacksonville Branch of the defendant, Reserve Bank, as described in sub-paragraph (*b*) above.

61 (*e*) Through like documents said Commercial Bank of Jasper, Florida, received and remitted for checks and cash items to said Jacksonville Branch on February 13, 1920, aggregating $845.51, less $1.05 exchange covered by draft to order of Federal Reserve Bank for $844.46, and endorsed and stamped paid on February 16, 1920.

(*f*) Through like documents items aggregating $543.58 were remitted for by the High Springs Bank of High Springs, Florida, to said Jacksonville Branch of defendant, Reserve Bank, less 1/10 of 1% exchange, on February 11, 1920.

(*g*) Through like documents items aggregating $1,294.12 on February 16, 1920, and $347.60 on February 18, 1920, were remitted for by the State Exchange Bank of Lake City, Florida, to said Jacksonville Branch of defendant, Reserve Bank, less 1/10 of 1% exchange. The original documents referred to will be to the Court shown.

8. Plaintiffs must assume that the defendant, Reserve Bank, is not conducting this business in violation of the second proviso to Section 13 of the Federal Reserve Act, as amended, which prohibits it from paying any such charge; and ther-fore Plaintiffs charge that while deduction of collection charges is thus allowed by the defendant, Reserve Bank, as between it and the remitting bank, these charges are either prepaid or repaid to it by the bank for whose account the checks are cleared, and that the member bank has in turn deducted these charges from the amounts credited or paid to its patrons who endorsed such checks over to it.

9. From the facts aforesaid Plaintiffs charge that the coercive measures, now threatened are not only not authorized or

62 required by the terms of the Federal Reserve Act, which includes the charter of defendant, Reserve Bank, but express provision is found therein for the performance of all clearing house functions, therein imposed, in the regular way and through orderly banking channels applicable to non-member banks as well as member banks. Wherefore, plaintiffs charge that the threatened coercive measures are ultra vires the charter of the defendant, Reserve Bank, and the execution thereof by the individual defendants, would be illegal, and should be enjoined.

10. Plaintiffs further allege on information and belief that the following coercive measures have been actually employed by Federal Reserve Banks in other Federal Reserve Districts, and since all the Reserve Banks are under the control of the Federal Reserve Board, plaintiffs have reason to fear that unless enjoined by the Courts methods of like emba-rassing, annoying and expensive kind will be employed against them by the individual defendants in this case

claiming to act under the charter power of the defendant, Reserve Bank.

(a) Wood Cones, President of Cones State Bank, of Pierce, Nebraska, was solicited in September, 1919, to have said Bank join the Federal Reserve Bank at Kansas City, Missouri, same being the Reserve Bank for the District in which said Cones State Bank is located. Upon refusing to join the system said Cones was requested to place his said bank on the par list. Refusing that, said Cones was informed by an agent of the Omaha Branch of said Federal Reserve Bank of Kansas City that his bank would be compelled to remit at par at an early date. During the next few weeks checks on said Cones Bank were presented at the counter for pay-
93 ment through the Express Company and an agent of said Omaha branch of said Kansas City Federal Reserve Bank, and by one expedient or another induced to accept exchange drafts therefor. Later on, November 14, 1919, a high powered automobile containing four people, drove into Pierce and stopped in front of said Cones Bank, but the engine was kept running. Two men W. S. Lower and M. L. Bishop, got out of the car armed with revolvers and entered said Cones Bank. As agents of said Federal Reserve Bank, they demanded the currency on checks drawn against the Cones State Bank of Pierce, Nebraska, of the aggregate face value of $31,900.00, some of which had been held for over three weeks. While one of said Cones Bank force was counting out the money (about $13,000.00 more than said Cones Bank was legally required to carry in its vault under the law of Nebraska) Mr. Lower told Cones that Bishop was a United States Marshall, hard boiled and armed, that he had cleaned up the State of Kansas and would get said Cones Bank, so it had better sign up the agreement and keep its money. This was refused.

Late in December an agent of the Kansas City Reserve Bank repaired to Pierce, Nebraska, under instructions to stay there until said Cones State Bank agreed to remit at par, in the meantime collecting all checks sent from said Federal Reserve Bank or its branches over the Counter of said Cones State Bank in cash, and attempting to organize a national Bank in opposition to said Cones State Bank and other State Banks doing business in Pierce, Nebraska, and fomenting dissatisfaction with the customers of said State Banks by charging that said State Banks were robbing their depositors of ten cents on every hundred dollars deposited with them. Said agents boasted that they were spending the Government's money "like drunken
94 sailors" and would not stop at any expense to force said State Bank to join the Federal Reserve System.

(b) A Country Bank in Indiana informs plaintiffs that it has had as much trouble with the Federal Reserve Bank of Chicago as the Cones State Bank had in Nebraska with the Federal Reserve Bank of Kansas City except that as yet no National Bank was being organized to put the State Bank out of business. This bank forbids plaintiffs to disclose its identity for the reason "that we do not want to be persecuted any longer by the Seventh Federal Reserve Bank".

(c) A County Bank in Wisconsin informs plaintiffs that the Federal Reserve Bank of Minneapolis has notified it that "other than regular methods of collection" will begin on March 15, 1920, and the State Bank adds "just what the outcome will be I cannot foretell, but we shall do the best we can to combat that form of hold-up, the same as any other attempted robbery or burglary."

This bank also forbids plaintiffs to disclose its identity, saying: "We are in an ideal position for the strong-arm methods of the Federal Reserve Bank to be used against us, being a long distance from help in the case of need."

Plaintiffs charge a combined and concerted movement of all the Federal Reserve Banks, including defendant Reserve Bank, to injure and damage Plaintiffs and other Country Banks throughout the United States by depriving them of the valuable property right to charge for their services in transmitting funds through "financial violence, fear, intimidation and oppression, as in this bill fully set forth.

65 11. Petitioners further allege that the present policy of coercion and attempted monoply of the business of the State Banking systems is due to the subversion of the design of the Federal Reserve Act to localize the several Reserve Banks in such a manner as to adjust them to the needs and customs of the several sections embraced in the several Reserve Districts. Nothing in the Federal Reserve Act is more obvious than the honest effort of Congress to prevent the evils of centralization. The Central Bank at Washington was eliminated for no other purpose. The classification of the directorate of the Reserve Banks was designed to neutralize this tendency, and to make each Reserve Bank responsive to the requirements of each element represented. The Advisory Council was created with the same object in view. All these checks on the evils of the autocratic use of power, seem to be rapidly losing their capacity to grapple with the evil, and are becoming, if they have not already become, spineless and impotent. The Reserve Board, whether rightly or wrongly, is in fact, at the throttle of all the combined power of the twelve Reserve Banks and they appear to be controlled and directed by this board, with the result that we have greater centralization at Washington than would have resulted from a single Central Bank. This was never contemplated in the Federal Reserve Act.

In support of this allegation Plaintiffs allege that a Director of the Federal Reserve Bank of Dallas, Texas, resigned from the Board of that Bank on October 17, 1919, on the ground that the policy and practices of the Bank were dictated from Washington and he was unwilling to give them the implied sanction that would be inferred from his remaining on the Board. A full copy of the resignation of said Director is hereto attached and marked Exhibit "A," to which the usual leave of reference is prayed.

66 12. Plaintiffs further allege that by universal custom and practice in the banking business, there is an implied contract between the bank and its depositors that, so long as a bank is solvent and open for business under the regulation and permission of the

governmental authorities to which it is accountable, funds will be drawn out against said deposits only in the regular course of business, and through usual and customary channels. Deposits are made and received with this understanding, and the basis of all the laws, rules and regulations as to amounts required to be kept in reserve and "in vault" rests upon this understanding. The transferee of a check is chargeable in law with the obligations resting upon the drawer in this respect and a willful violation of this implied contract, that tends to demolish the entire structure of banking rules and practices and produce irreparable loss and damage, will be enjoined by a Court of Equity. Smith, Hammond & Smith, Plffs. Sols. Alex W. Smith, of Counsel.

"Exhibit A" to Amendment.

October 17, 1919.

Hon. Chairman and Board of Directors, Federal Reserve Bank, Dallas, Texas.

Gentlemen: Entertaining as I do a deep sense of appreciation of the honor conferred upon me in selecting me as one of the Directors of the Houston Branch, I regret very much that circumstances beyond your control and mine have arisen that compel me to relinquish the honor.

The policy recently adopted by the Federal Reserve Board under which coercive measures are being pursued to compel small country banks, who are not members of the Federal Reserve System and are not even eligible to such membership, to surrender what I conceive to be a legitimate source of profit, is in my judgment wholly unwarranted by the language of the Federal Reserve Act, by the intent of its framers or by any existing circumstances or conditions.

So far as I know, in all times and in all countries since the beginning of the banking business, exchange has been considered a legitimate source of profit to those engaged in that business and certainly it has always been so considered in this country until the advent of the present regime.

However the transaction may be disguised, there is a cost involved or a service performed in the transmission of funds from one place to another, else why does the Government maintain thousands of money order postoffices in which the people are charged for this very same character of service and at higher average rates than those charged by the banks in question?

The Federal Reserve System has in the exercise of its fundamental functions demonstrated its usefulness and value; it is now firmly established, it is strongly intrenched in public favor, its future growth and prosperity is in no sense dependent on its ability to furnish its members universal par facilities.

I believe a great wrong is being perpetrated in employing the tremendous power and resources of the Federal Reserve System in an invasion of the vested rights of institutions that have no connection whatever with the System. I believe the methods now being employed to whip objecting banks into line are

arbitrary and tyrannical in the last degree and that these methods are justifiable only upon the theory that might makes right, a doctrine to which I am unwilling to subscribe.

It may be urged, and I fully realize that as an humble director of a Branch Bank, I am not concerned with or responsible for the policies and practices ordered by the governing body at Washington, but my convictions in this matter are so positive that I am unwilling to give these coercive measures that degree of sanction that might be implied from my official connection with a branch of the system now engaged in carrying them out.

I, therefore, respectfully tender my resignation as a director of the Houston Branch, to be effective at your earliest convenience. Yours very truly, (Signed) J. A. Pondrom.

GEORGIA,
Fulton County:

You, Alex W. Smith do swear that you are of counsel for the plaintiffs in said case, all of whom are non-resident of the City of Atlanta and County of Fulton where said case is now being heard, and that the allegations of the foregoing amendment are true in manner and form as alleged. Alex W. Smith.

Sworn to and subscribed before me, March 24, 1920. F. L. Beers, Deputy Clerk, U. S. District Court, Northern District of Georgia.

69 **Order Allowing Amendment.**

[Filed Mar. 24, 1920.]

The within amendment allowed and ordered filed. Subject to objection.

This March 23, 1920. Beverly D. Evans, U. S. Judge.

Service acknowledged. Copy received. This March 23, 1920. Randolph & Parker, Attys. for Defendants.

[File endorsement omitted.]

Answer of Defendants.

IN THE

District Court of the United States for the Northern District of Georgia.

[Title omitted.]

Bill for Injunction, etc.

Hollins N. Randolph, Robert S. Parker, Solicitors for Defendants. John W. Davis, of Counsel.

70 *Answer of the Defendants.*

IN THE

District Court of the United States for the Northern District of Georgia.

[Title omitted.]

And now come the Federal Reserve Bank of Atlanta, M. B. Wellborn, Joseph A. McCord, L. C. Adelson and M. W. Bell, defendants in the cause above styled, and make answer to the bill of complaint as filed herein by the plaintiffs, and for answer say:

A.

1-A.

Defendants are without knowledge as to the allegations of paragraph 1 of the bill of complaint and, for that reason, are unable either to admit or deny the same.

2-A.

Defendants admit the allegations of paragraph 2 of the bill of complaint.

3-A.

Defendants are without knowledge as to the number of State banks in the State of Georgia, and as to the number of said banks located in the smaller towns of said State. With the exception of those allegations as to which defendants have stated in this paragraph of this answer that they are without knowledge, the allegations of paragraph 3 of said bill are admitted.

71

4-A.

Defendants admit that the State of Georgia has large agricultural interests, and that a large portion of its population reside outside of its larger cities. With the exception of the allegations specifically admitted in this paragraph of the answer, paragraph 4 of the bill contains only statements of conclusion and, therefore, requires no further answer.

5-A.

Paragraph 5 of the bill contains only statements of conclusions and, therefore, requires no answer.

6-A.

Defendants are without knowledge as to the allegations of paragraph 6 of the bill and, for said reason, neither admit nor deny the allegations thereof.

7-A.

Defendants admit that one of the functions performed by commercial banks is to facilitate the use of checks in commercial transactions. With the exception of those allegations which defendants have specifically admitted in this paragraph of the answer, the defendants are without knowledge as to the allegations of paragraph 7 of the bill of complaint.

72

8-A.

Defendants admit the allegations of paragraph 8 of the bill of complaint.

9-A.

Defendants admit that in the ordinary course of business commercial banks do receive through the mails by correspondence with banks, many checks drawn upon them. With the exception of those allegations which have been specifically admitted in this paragraph of the answer, defendant says that paragraph 9 of the bill of complaint contains only statements of conclusions and, therefore, requires no further answer.

10-A.

Defendants admit that the charges which are some times made by banks when remitting by draft for checks drawn upon them are commonly known as "exchange." Except as hereinbefore specifically admitted in this paragraph of the answer, defendants deny each and every allegation of paragraph 10 of the bill of complaint.

11-A.

Paragraph 11 of the bill of complaint is, for want of sufficient information, neither admitted nor denied.

12-A.

Defendants deny paragraph 12 of the bill of complaint as charged. They say upon information and belief that the Atlanta Clear-
73 ing House, referred to in said paragraph, collects from its membership an amount which averages $1.11 per each $1,000 of the aggregate of items handled through said Association, but that said amounts so collected from the Clearing House members and described by plaintiff as "the cost of said service" is utilized for the

payment of charges imposed by out-of-Atlanta banks for the payment of and the remittance for checks. That is to say, the $1.11 per $1,000 represents the average of charges imposed by non-par remitting banks outside of Atlanta for the payment of and remission for checks, cleared through said Clearing House, drawn on said banks.

13-A.

Paragraph 13 of the bill of complaint is, for want of sufficient information, neither admitted nor denied.

14-A.

Defendants deny each and every allegation contained in paragraph 14 of the bill of complaint.

15-A.

Paragraph 15 of the bill contains only statements of conclusions of the pleader and, therefore, requires no answer.

16-A.

Defendants admit the allegations of paragraph 16 of the bill of complaint.

74

17-A.

Defendants admit that, at the time said bill was filed herein, out of approximately 30,260 banks in the United States 26,315 were remitting to the Federal Reserve Banks at par for checks through the mails and, further admit that the defendant Wellborn had so stated. They further admit that of said 26,315 banks, 7,500 or more are National Banks. They say further that on January 1, 1921, there were in the United States approximately 30,523 banks, and that of that number, on said last mentioned date, all but 1,755 of said banks were remitting to the Federal Reserve Banks at par. With the exception of those allegations which are specifically admitted in this paragraph of the answer, paragraph 17 of the bill of complaint contains only statements of conclusions and, therefore, requires no further answer. Defendants specifically deny, however, that any coercive measures have been used to compel any bank to become a member of the Federal Reserve System, or to compel any bank to submit to any plan whatsoever.

18-A.

Paragraph 18 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer.

19-A.

Paragraph 19 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer.

75

20-A.

Paragraph 20 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer.

21-A.

Paragraph 21 of the bill of complaint is admitted.

22-A.

Paragraph 22 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer.

23-A.

Paragraph 23 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer.

24-A.

Paragraph 24 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer.

25-A.

Paragraph 25 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer.

26-A.

Paragraph 26 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer.

76

27-A.

Paragraph 27 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer.

28-A.

Paragraph 28 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer.

29-A.

Paragraph 29 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer.

30-A.

Defendants deny each and every allegation of paragraph 30 of said bill of complaint.

31-A.

Defendants admit that on January 9, 1920, the said defendant Federal Reserve Bank owned gold in the amount of $108,239,000 and had a subscribed capital of approximately $6,850,000, and a paid capital of $3,429,000 and a surplus of $4,695,000, and that the percentage of surplus to paid in capital for the twelve Federal Reserve Banks was 137 and a fraction per cent. Defendants are without knowledge as to the aggregate capital of all of the country banks in Georgia. Except as to those allegations which de-
77 fendants have specifically admitted, or as to those which defendants have stated they are without knowledge, defendants deny each and every allegation contained in paragraph 31 of the bill of complaint.

32-A.

Defendants are without knowledge as to the allegations of paragraph 32 of the bill of complaint and, for this reason, are unable either to admit or deny the allegations thereof.

33-A.

Paragraph 33 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer. Defendants deny, however, that they, or any of them, have conspired or confederated for the purpose in said paragraph alleged, or for any purpose whatever.

34-A.

Defendants admit the allegations contained in paragraph 34 of said bill.

35-A.

Defendants admit that in December, 1919, W. P. G. Harding, Governor of the Federal Reserve Board, did, with the approval of said Board, write a letter, Exhibit "A" annexed to plaintiff's bill of complaint being a substantial copy thereof. With the exception

of those allegations which have been specifically admitted in
78 this paragraph of the answer, paragraph 35 of the bill of complaint contains only statements of conclusions as to the purport and construction of Exhibit "A" and, therefore, requires no further answer.

36-A.

Paragraph 36 of the said bill of complaint contains only conclusions of the pleader as to the purport of Exhibit "A" and, for that reason, requires no answer.

37-A.

Paragraph 37 of said bill of complaint contains only conclusions of the pleader as to the purport of Exhibit "A" and, for that reason, requires no answer.

38-A.

Defendants admit that on or about December 23, 1919, the defendant Wellborn, acting as Governor of the defendant Federal Reserve Bank of Atlanta, sent a letter to petitioners and to all other non-members banks in the State of Georgia which were not then remitting at par to the defendant Reserve Bank, and that Exhibit "B" as annexed to said bill of complaint is a substantial copy of said letter. Except as hereinbefore specifically admitted in this paragraph of the answer, defendants deny each and every allegation of paragraph 38 of the bill of complaint.

39-A.

Defendants admit that there was enclosed under the same cover
with Exhibit "B" a copy of Exhibit "A" and also a certain
79 map. Except as hereinbefore specifically admitted in this paragraph of the answer, defendants deny each and every allegation of paragraph 39 of said bill of complaint.

40-A.

Paragraph 40 of the bill of complaint contains merely statements of conclusions as to the purport of Exhibit "B" and other conclusions and, therefore, requires no further answer. Insofar, however, as the same may be taken as charging any issuable averment, the same and each and every part thereof is denied.

41-A.

Defendants say that paragraph 41 likewise sets up more conclusions of the pleader, and contains no issuable or relevant allegation of fact. Defendants deny, however, the soundness of the conclusions which plaintiffs have undertaken to set out as to the meaning

and import of said letter marked exhibit "B". Insofar as said paragraph 41 may be taken to present relevant and pertinent allegations of fact, the same are denied.

42-A.

Defendants admit that items in transit, technically called the "float", are carried by the Federal Reserve Bank in an uncollected funds account from the date of receipt until transferred in accordance with a stipulated time schedule, whether then collected or not, to a collected funds account. Except as hereinbefore admitted defendants deny the allegations of paragraph 42 of said bill.

80

43-A.

Defendants admit that the profits of the defendant Reserve Bank for the year 1919 amounted to more than 100 per cent of its paid in capital, and that its earnings since the date of organization have averaged 33-1/3 per cent of its paid in capital. With the exception of those allegations which have been specifically admitted in this paragraph of the answer, paragraph 43 of the bill of complaint contains only statements of conclusions and, therefore, requires no further answer. Except as heretofore in this paragraph of the answer admitted, defendants deny any proper allegation of fact in said paragraph contained, if any such allegations there be in said paragraph.

44-A.

Defendants deny each and every allegation contained in paragraph 44 of the bill of complaint.

45-A.

Defendants are advised that the first sentence in paragraph 45 is a statement of a conclusion and, for that reason, the same requires no answer. Answering the last sentence of paragraph 45, defendants say that the same is immaterial and irrel-vant. Defendants admit that the defendant Reserve Bank has been in operation since November 16, 1914, and that while it is true that only within a comparatively recent time has the defendant Reserve Bank undertaken to make collection of all checks drawn on all banks in the Sixth Federal Reserve District, yet the service of collecting

81 all such checks has been in contemplation since the organization of the bank. Defendants say that the fact that the defendant Bank has not heretofore performed this service for the members of the Federal Reserve System cannot be urged in bar of the right to perform that service at the present time.

46-A.

Answering paragraph 46 of said bill, defendants deny that they had in contemplation the accumulation of checks until the aggre-

gate reached a large amount before presentation for payment, and deny that the conclusions of the plaintiffs as embodied in said paragraph are warranted by any averment of ultimate fact in said bill contained. Defendants deny and disclaim any intention to injure any of the plaintiff banks, and deny all other allegations contained in said paragraph.

47-A.

Answering paragraph 47 of said bill, defendants say that said paragraph contains no allegations of fact, but only statements of groundless conclusions of the pleader. Defendants, however, in answer thereto, deny the charges therein made, and say that said paragraph is merely an unwarranted and uncalled for attack upon the defendants unsupported by any allegations in said bill contained.

48-A.

Defendants deny each and every allegation contained in paragraph 48 of the bill of complaint. They deny that they have in contemplation, or hold in intendment, anything except the
82 collection of checks in a perfectly lawful and legal manner by presentation for payment regularly and without accumulation at the counter of a bank which does not desire to remit at par upon presentation for payment through the mails by the defendant Reserve Bank.

49-A.

Defendants admit that in order to collect checks on non-member banks which had declined to remit at par for checks drawn upon such banks, and in the hands of defendant Federal Reserve Bank for collection, said defendant bank had intended, in some instances, to employ agents in certain towns where such non-member banks were respectively located, and had intended, from day to day, in regular course of business, to mail checks so drawn on said non-member banks to such agents, with instructions to present the same at the counters of the respective drawee banks for payment, and that the defendant may in the future appoint agents for the same purpose, and mail checks to such agents with similar instructions. Such checks, if so sent to such agents, will be sent promptly upon receipt thereof, and in regular course of business, without accumulation. Defendants deny, however, that in thus planning for the appointment of, or the mailing of such checks to such agents, the defendant Reserve Bank, or any of the defendants, had any purpose or intent other than to collect the said checks received by the defendant Bank for collection, and in regular course of business. Should the said defendant Bank in the future appoint such agents the appointment will be solely and only in line with the bona fide intent to make such collection in regular course of business.
83 Defendants also deny that the effect upon any drawee bank of such a course of dealing would be as charged in said para-

graph. With the exception of those allegations which have been specifically admitted or denied in this paragraph of the answer, paragraph 49 of the bill of complaint contains only statements of conclusions, and therefore, requires no further answer.

50-A.

Defendants admit that in order to collect checks on non-member banks in its hands for collection, and drawn upon banks which have declined to remit therefor at par to the defendant Reserve Bank, said defendant Reserve Bank has in some instances transmitted checks drawn on said non-member banks to local express companies with instructions to present at the respective counters of the drawee banks for payment, and that the defendant Federal Reserve Bank may in the future continue to so transmit such checks with similar instructions. Defendants deny, however, that in the transmission of checks as aforesaid the defendant Federal Reserve Bank, or any of the defendants had, or will have, any purpose other than to collect said checks. In cases where such checks have been so presented for payment through express companies, they have been presented in regular course of business and without accumulation, or intent to accumulate the same for any ulterior purpose and, if in the future such checks should be so presented, they will be presented in regular course of business promptly as received by the defendant Reserve Bank for collection and without accumulation. With the exception of those allegations which have been specifically admitted or denied in this paragraph of the answer, paragraph 50 of the bill of complaint contains only statements of conclusions and, therefore, requires no further answer.

51-A.

Defendants say in answer to paragraph 51 of said bill that the same consists wholly of conclusions of the plaintiffs, and contains no averment of pertinent or relevant facts which can be answered in such a way as to join issue thereon. Defendants say that said paragraph is wholly immaterial, irrelevant and impertinent to any issue attempted to be made by said bill, and that the conclusions therein contained are unsupported by any allegations of fact anywhere in said bill contained. If it should be considered, however, that said paragraph contains any proper or specific averment of any threatened or unlawful act, defendants deny the same, and each any every part thereof.

52-A.

Paragraph 52 of the bill of complaint contains only statements of conclusions, and therefore, requires no answer. Defendants deny, however, that any method of collecting checks which any of the defendants contemplate, or which is properly charged in the bill of complaint is, or would be, an infringement of any constitutional, legal, equitable or other right of the plaintiffs.

53-A.

Defendants are without knowledge as to the number of banks in the State of Georgia, and as to the number of banks which
85 have been chartered by the State of Georgia, and as to the number of banks in Georgia located outside of large cities, and as to the amount of capital stock which banks in Georgia actually have, or could sell or could profitably employ. With the exception of those allegations as to which defendants have stated in this paragraph of the answer that they are without knowledge, paragraph 53 of the bill of complaint contains only statements of conclusions and, therefore, requires no further answer. Defendants deny, however, each and every allegation of said paragraph with the exception of those allegations as to which defendants have stated in this paragraph of the answer that they are without knowledge.

54-A.

Defendants admit that plaintiffs and most of the other banks to which the letter, exhibit "B," was sent by the defendant Federal Reserve Bank are not remitting at par to the defendant Federal Reserve Bank, and that defendants have conferred with a committee of Georgia bankers with regard to par collection. Except as hereinbefore specifically admitted in this paragraph of the answer, defendants deny each and every allegation contained in paragraph 54 of the bill of complaint.

55-A.

Defendants admit that the defendant M. W. Bell, in an address before the Rotary Club of Atlanta on the 5th day of January, 1920, used the words which appear in quotation marks in para-
86 graph 55 of the bill of complaint. Except as hereinbefore specifically admitted, defendants deny each and every allegation of paragraph 55 of the bill of complaint.

56-A.

Paragraph 56 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer. Defendants deny, however, each and every allegation thereof which may be considered as containing any averment of issuable fact.

57-A.

Paragraph 57 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer. Defendants deny, however, each and every allegation thereof which may be considered as containing any averment of issuable fact.

58-A.

If in any of those parts of the bill of complaint which the defendants have referred to as containing only statements of conclusions there be any allegations of fact contrary to the admissions in this answer contained, defendants deny each and every one of said allegations.

59-A.

Defendants deny each and every allegation of fact contained in the bill of complaint, except those allegations which defendants have specifically admitted in this answer, and except as to those allegations which defendants have stated in this paragraph of this answer that they are without knowledge.

B.

For answer to the amendment filed to the original bill of complaint on March 24, 1920, defendants say:

1-B.

Paragraph 1 of said amendment contains only statements of conclusions and, therefore, requires no answer. Defendants say, however, in response thereto, that while section 13 of the Federal Reserve Act contains the provision quoted, it also contains the provision that no charge for the collection and remission of the proceeds of checks and drafts shall be made by any member or non-member bank against the Federal Reserve Banks.

2-B.

Paragraph 2 of said amendment contains only statements of conclusions and, therefore, requires no answer. Defendants deny, however, the soundness of the conclusions set up in said paragraph insofar as the same are applicable to the collection by the Federal Reserve Bank of checks held by it for collection.

3-B.

Paragraph 3 of said amendment contains only statements of conclusions and, therefore, requires no answer. Defendants, however, deny the soundness of said conclusions, and challenge the construction of section 13 of the Federal Reserve Act as in said paragraph set forth.

4-B.

Paragraph 4 of said amendment contains only statements of conclusions and, therefore, requires no answer. Defendants, however, deny the soundness of the conclusions set forth in said paragraph

and challenge the construction of the Federal Reserve Act as therein contained.

5-B.

Paragraph 5 of said amendment contains only statements of conclusions and, therefore, requires no answer. Defendants, however, deny the soundness of the conclusions set forth in said paragraph and challenge the construction of the Federal Reserve Act as therein contained.

6-B.

For answer to the first sentence of paragraph 6 of said amendment, defendants say that section 16 of the Federal Reserve Act speaks for itself, and that the construction thereof is for the Court. Defendants admit that the language quoted in the last sentence of paragraph 6 of said amendment is a substantial copy of sub-section 10, Regulation "J," series of 1917, promulgated by the Federal Reserve Board.

7-B.

In response to the allegations contained in paragraph 7 of said amendment, defendants say that it is not true that they have ever in general, or as *as* a matter of custom, sent out for collection
89 checks on non-member banks, authorizing collection charges to be deducted therefrom. Defendants, therefore, deny the allegations contained in paragraph 7 of said amendment as charged. They admit that the Jacksonville Branch of the Defendant Reserve Bank did, at or about the times mentioned in sub-sections A, B, C, D, E, F and G, of said paragraph 7, forward for collection and payment the items referred to in said subsections, and did receive remittances therefor less certain deductions for remittance charges as substantially set forth in said paragraph. Defendants say, however, that the said defendant Bank accepted remittances of said items in the isolated cases enumerated in said subsections of said paragraph for the sole and only reason that it had taken the said items for collection, believing in good faith that the same could be collected at par.

8-B.

Paragraph 8 of said amendment contains only statements of conclusions and, therefore, requires no answer. Defendants, however, deny that they have ever, as a matter of practice or custom, authorized or paid for itself or for the account of others, exchange charges to banks on cash items payable on presentation in its hands for collection, or collected by it.

9-B.

Paragraph 9 of said amendment contains only statements of conclusions and, therefore, requires no answer. If, however, it should

be considered that said paragraph of said amendment contains any issuable allegations of fact, the same, and each thereof, are denied.

90

10-B.

Upon information and belief, defendants deny each and every allegation contained in paragraph 10 of said amendment, and each and every sub-section thereof, except that defendants deny positively and emphatically the charge of a combined and concerted movement of all the Federal Reserve Banks, including the defendant Reserve Bank, to injure and damage plaintiffs and other banks, as contained and set forth in the last sentence of said paragraph 10. Defendants say further that the charges and allegations contained in said paragraph with respect to the acts of Federal Reserve Banks, other than the defendant Bank, are immaterial, irrelevant and imperti-ent, being res inter alios acta.

11-B.

Defendants are unable either to admit or deny the allegation in the concluding portion of paragraph 11 of said amendment, to the effect that a director of the Federal Reserve Bank of Dallas, Texas, resigned from the Board of that Bank on October 10, 1919, and they are unable either to admit or deny whether or not he wrote the letter attached to said amendment as Exhibit "A" thereof. They deny the other allegations of said paragraph.

12-B.

Defendants say that paragraph 12 of said amendment contains only statements of conclusions and, therefore, requires no answer. They deny, however, the soundness of said conclusions and

91 if it should be considered that said paragraph contains any issuable allegations of fact they deny the same and each and every part thereof.

C.

By way of further answer to the bill of complaint herein, defendants allege as follows:

1-C.

Since the institution of this cause twenty banks, parties plaintiff herein, have voluntarily joined the Federal Reserve System, either by nationalizing or by becoming regular or clearing members thereof. Said twenty banks are now voluntarily remitting to the defendant Bank at par. The names of said plaintiff banks that have joined said Federal Reserve System are as follows:

Bank of Albertville, Albertville, Ala. (nationalized).
Bank of Commerce, Clayton, Ala.

Monroe County Bank, Monroeville, Ala.
Orrville Bank & Trust Co., Orrville, Ala.
Bank of Pittsview, Pittsview, Ala.
Roanoke Banking Co., Roanoke, Ala.
Citizens State Bank, Marianna, Fla.
Bartow Bank, Bartow, Ga.
Bank of Bowersville, Bowersville, Ga.
Bank of Bowman, Bowman, Ga.
Peoples Bank, Carrollton, Ga.
Bank of Cartersville, Cartersville, Ga.
Exchange Bank, Cordele, Ga.
Brand Banking Co., Lawrenceville, Ga.
92 Oglethorpe County Bank, Lexington, Ga.
Farmers Bank, Monroe, Ga.
Bank of Soperton, Soperton, Ga.
Bank of Toccoa, Toccoa, Ga.
Bank of Zebulon, Zebulon, Ga.
Bank of Tifton, Tifton, Ga. (Clearing member).

Since the institution of this suit, five of said plaintiff banks, other thon those that have become members of said system, have applied for membership therein. There are now pending two applications for membership in the Federal Reserve System filed by plaintiff banks. Twenty-one State banks located in the Sixth Federal Reserve District, not parties to this cause, have, since the institution of the same, voluntarily joined the Federal Reserve System.

2-C.

Defendants further say that the Federal Reserve Bank of Atlanta is one of the twelve Federal Reserve Banks established pursuant to that certain Act of Congress known as the Federal Reserve Act. Prior to the establishment of the Federal Reserve System the banking system of the United States consisted of banks organized and doing business under the National Banking Act, known as "National Banking Associations," and banks organiezd under the laws of the various States of the Union. The inelastic note issue, secured by bonds of the United States; the impotency of the banking system in times of panic, due to the lack of mobilized reserve utilizable for credit purposes; and the lack of any effective agency for the systematic, economical and expeditious collection of checks, lead
93 to the passage of the Federal Reserve Act. Defendants allege that the reasons actuating Congress in passing said Act were to provide for (A) a new basis for the issue of circulating notes; (B) the mobilization of bank reserves and, (C) the effective and prompt clearing and collection of checks and drafts.

In aid of its purpose to provide a system for the collection and clearing of bank checks and drafts, Congress has made provision in the Federal Reserve Act for the Federal Reserve Banks to act as clearing houses for their member banks, and those banks maintaining claring accounts with them. By section 16 of the Federal Re-

serve Act, the Federal Reserve Board is authorized to permit or require the Federal Reserve Banks to act as such clearing houses. In order, however, to function effectively as a clearing house, it is necessary that the defendant Federal Reserve Bank, as well as all other Federal Reserve Banks, collect all checks payable on presentation, whether drawn on member or non-member banks. The value to the banks and to the public of the service rendered by any clearing house is directly proportionate to the number of banks, the checks on which can be collected through it.

3-C.

Defendants say, furthermore, that in order to function most effectively and for the greatest benefit of commerce and industry, Federal Reserve Banks, acting as clearing houses, must collect checks at par without the deduction of exchange charges from remittances. The person who pays any such charge is the person who receives the check in payment of a debt. He may insist upon
94 payment in lawful money. When he accepts payment by check drawn upon a bank of the debtor's choice, he does so solely for the convenience of the debtor. Therefore, if the payee bank makes a charge for remitting funds to the place where the creditor is located, the debtor, and not the creditor, should pay the charge. As shown by plaintiffs' bill, however, the charges which the plaintiffs claim they have the right to collect are, in fact, under the course of dealing alleged by the plaintiffs, placed upon the creditor and not the debtor. The effect of said course of dealing is, furthermore, to permit a payee bank to exact a charge for the payment of a check drawn on it, thereby discounting its own obligation.

4-C

If exchange charges of 1-10 or 1% were made on all checks now cleared through Federal Reserve Banks, exclusive of Government checks and checks payable in Federal Reserve cities, the aggregate of such charges would amount to in excess of one hundred and thirty-five million dollars annually, which sum, as hereinbefore set out, would constitute a direct charge or tax on the commerce and industry of the country. In order that commerce and industry may not be burdened with such a tax, the Federal Reserve Board, and the Federal Reserve Banks, have, since the establishment of the Federal Reserve System, consistently undertaken to establish a par collection system whereby checks on all banks in the United States can be collected at par. To this end, the Federal Reserve Board established in May, 1915, the Gold Settlement Fund. This fund was created by a deposit in the United States Treasury made by each of the twelve
95 Federal Reserve Banks of a certain amount of gold. By means of daily telegrams between the Federal Reserve Banks, and transfers of gold on the books of this fund, daily balances between the Federal Reserve Banks are adjusted without cost, other

than the cost of such telegrams and of the administration of said fund. This cost, which is nominal in view of the large inter-district balances which are cleared in this manner, are absorbed by the Federal Reserve Banks. Defendants say that the advantage and benefit to the country of a systematic expeditious and economical collection of checks is incalculable in its direct benefits to the entire country, besides saving the public the enormous sum above named.

Prior to the institution of the Federal Reserve System, with its facilities for the orderly and prompt collection of checks, the banks of the country maintained clearing arrangements among themselves. Such arrangements often involved the circuitous routing of checks in order to escape the collection of exchange. Each bank was striving to settle the problem of check collection for itself. The result was an expense to business and a toll upon industry, with the inconvenience and dangers arising from delayed collections and the direct routing of checks. Knowing the advantages which would flow from the universal clearing of checks at par through the Federal Reserve System the plan and purpose of the Federal Reserve Board, and all of the Federal Reserve Banks, including the defendant Reserve Bank, was to give to the country facilities whereby all checks, upon whatever bank drawn, could be promptly, effectively and economically cleared through the Federal Reserve System. To make the par collection system complete, however, each Federal Reserve
96 Bank must be able to collect at par checks drawn on all banks located in its respective district. As heretofore set out, this had been practically accomplished in seven of the twelve Federal Reserve Districts on February 20, 1920.

The Federal Reserve Act provides, to-wit: in section 13 thereof, that no charge made by any bank for the collection or payment of checks and drafts, and remission therefor by exchange or otherwise, shall be made against the Federal Reserve Banks. Defendants show, therefore, that under the plain provisions of this act they are disabled from paying any such charge to any bank. Therefore, if a Federal Reserve Bank undertakes to make collection of a check deposited with it for such purpose, it must make collection in a way that will not entail the payment of any such charge. If any bank, however, refuses to make remittance at par for any check sent through the mails, the defendant Reserve Bank must use some other method of collection, or else deny to the holder of a check so drawn upon such non-member bank the right to have such check collected through the Federal Reserve Bank.

Believing that the interests of the public, the intent of the Federal Reserve Act, and the effective collection and clearing of checks required that those using the collection facilities of the Federal Reserve Banks should have the privilege of collecting through the Federal Reserve Bank of Atlanta any check drawn upon any bank in the Sixth Federal Reserve District, the Federal Reserve Bank of Atlanta did send to all banks in the Sixth Federal Reserve District not then remitting at par, the letter attached to said original bill as Exhibit "B." Said letter, when sent, had in it the enclosures referred to in the said bill of complaint. Defendants deny, however, that in

sending said letter they had any motive or intent other than
97 the bona fide purpose of making provision for the collection
of checks in regular course of business for those who wished
the checks so collected.

5-C.

In undertaking to make such collection upon all banks located in the Sixth Federal Reserve District, the defendants had no wish, intent, desire or purpose to injure any bank or any person. They had no purpose or intent of forcing upon any bank membership in the Federal Reserve Bank of Atlanta. They had no wish, desire or intent to deplete the revenues of any bank.

6-C.

They show that their plan and purpose in sending said letter was o secure, if possible, the voluntary consent of the banks, to which he same was addressed, to remit at par for all items sent through the nails by the defendant Bank; that, failing in the endeavor to secure uch consent from said banks, they had planned through some legiti- nate agency, to-wit: the express company, another bank located in he same town, or any other agent specially designated for the pur- ose, to undertake the collection of checks drawn upon those banks y personal presentation at the counters of the payee banks. They eny, however, that they had any plan or purpose to accumulate hecks for the purpose of annoying or embarrassing any bank. uch checks, if personally presented, would have been presented to ie payee banks when and as received, promptly in regular course of daily business and without accumulation.

8 Defendants are advised and believe that it is the duty of said defendant Bank and of its officers to give to those who ail themselves of its services, the utmost of service in the collection f all checks and drafts. Since by law the defendant Reserve Bank unable to pay to any bank a charge for the payment and remission checks, defendants are unable to adopt any method of collecting ecks drawn upon banks which do not remit at par save methods hich involve the personal presentation of such checks for payment the counters of the payee banks. They do not believe that in uity and good conscience the plaintiff banks should force the de- ndants to deny to regular and clearing member banks, other Fed- al Reserve Banks and the business and commerce of the country nerally, the full and free collection of all checks deposited with the fendant Bank for collection.

7-C.

Defendants deny that remission at par by the plaintiff banks to e defendant Federal Reserve Bank would destroy or seriously in- re the plaintiff banks. The 29,768 banks in the United States t now remit at par have not been forced out of business by so ng, but as defendants are advised and believe, are in a prosperous

and satisfactory financial condition. In substantiation of this last averment, defendants show that according to a compilation of the reports of the National Banks of the country made pursuant to law, their net earnings have shown a progressive increase from the year 1915 to date. The figures are as follows:

99

Year.	No. of banks.	Net earnings.
1915	7,560	$127,094,709
1916	7,571	157,543,547
1917	7,589	194,321,000
1918	7,691	212,332,000
1919	7,762	240,366,000

The above figures affecting only National Banks are brought to the attention of the Court because all National Banks have been remitting at part to the Federal Reserve Banks since the year 1915, and down to and including the present date. Similar figures affecting the earnings of those State banks which are members of the Federal Reserve System, and those which are, though not members, voluntarily remitting to the Federal Reserve Banks at par are not brought to the attention of the Court for the sole and only reason that such figures are not available in accurate tabulations. Defendants allege upon information and belief, however, that a similar compilation of the earnings of State Banks remitting to the Federal Reserve Banks at par would show a progressive increase in aggregate earnings for the years aforesaid, despite the fact that remittances to the Federal Reserve Banks are being made at par.

Defendants also show that according to the reports made pursuant to law there has been a progressive decrease in National Bank failures since the year 1915. The official records disclose that in 1915 there were 14 National Bank failures; in the year 1916, 13 National Bank failures; in the year 1917, 7 National Bank failures; in the year 1918, 2 National Bank failures and in the year 1919 only one National Bank failed.

100 Defendants further show that many of the banks of the country now remitting at par and, as above set out, suffering no ill effects therefrom, are no larger nor of stronger resources than banks which are plaintiffs in this case. Even should the plaintiff banks voluntarily remit to the Federal Reserve Banks at par, they could, at their own options, make charges for collection and remission of all items save cash items payable upon presentation and forwarded by the Federal Reserve Bank. They could, furthermore, at their own options, make charges of their own depositors for the cost of collecting checks drawn upon other banks. The actual cost of making remission, exclusive only of clerk hire, the defendant Reserve Bank offered to bear in its letter, exhibit "B." Defendants say, furthermore, that the clerical labor employed by the plaintiff banks would be a necessary expense of doing business, regardless of whether or not the plaintiff banks made remittances in exchange through the mails.

8-C.

Defendants allege that the sole and only reason why the plaintiff banks do not remit at par is that they wish in the future, as they have in the past, to make a profit through the payment of checks drawn on themselves. Exchange charges originally represented the actual cost of transmitting funds from one part of the country to another. The expense of making such charges originated at a time when the physical transportation of coin and currency was frequently necessary and was difficult and expensive. No such considerations now obtain and when any bank makes a charge for the payment of a check drawn on it, whether remitted through
101 the mails or not, the charge so made is simply an arbitrary deduction from the face of the check, and represents to that extent an unjust tax on the industry of the country. It represents, moreover, a discount by the paying bank of its own obligation. Defendants, therefore, submit that it is inequitable for any bank to make a profit upon the payment of checks drawn upon it, and to exact a charge for the performance of one of the ordinary functions of banking. Plaintiffs, moreover, through correspondent banks that are members of the Federal Reserve System, use to the fullest possible extent the par collection facilities of the defendant Reserve Bank, thereby collecting, wherever possible, their own items at par, but refuse to reciprocate in kind for the general good and advancement of the policy of universal par clearance.

9-C.

Defendants have heretofore denied the doing of any act which would invade the rights or province of any State or State authority over any State bank. The Federal Reserve Act itself protects the right of the State to control its own banks and no usurpation of authority is permissible thereunder. Defendants deny again that they have attempted, or now plan, the overriding of the power of any State. To say that remitting at par to defendant Reserve Bank will force any bank into an unwilling membership in the Federal Reserve Bank is the mere announcement of an unwarranted conclusion. Thousands of banks in the United States, not members of the Reserve System, now voluntarily remit at par to the various Reserve Banks. No relation necessarily exists between remitting at par and membership in the Federal Reserve System. All members of the System must naturally so remit at par, but any bank
102 may remit at par to the Reserve Banks, that is, pay without deduction, checks drawn on such banks through the medium of any par exchange, when presented through the mails by the Federal Reserve Banks, without in any wise feeling the necessity of joining the System for any reason growing out of such par remitting. Therefore, defendants say that plaintiffs cannot in law, in fact, or in reason, predicate a charge of coercion and attempted usurpation of power upon the fact that the defendants have made of the plain-

tiff a simple request to remit through the mails at par. Defendants ask of the banks of the great sovereign States of the Sixth Reserve District no surrender of any principle and no abdication of allegiance to State authority. Defendants say that in fact no such questions are involved in this litigation. There are averred in plaintiffs' bill no facts which warrant any conclusion of a threatened clash between State *of* National laws, and said bill presents no ground of conflict between State and National institutions. Defendants bespeak for themselves, however, and for the defendant Reserve Bank, the right to carry on the business of said bank in a lawful way and in the way pointed out by the law from which said bank draws its existence and the right to exercise its corporate functions. Such rights as the defendants contend for are not in derogation of State laws, nor are they inimical to any lawful right of the plaintiffs guaranteed by any system of law, State or Federal.

10-C.

103 In pursuance of its powers and authority, as vested in it by the Federal Reserve Act, the Federal Reserve Board has heretofore required of each Federal Reserve Bank that it exercise for its member banks, whether regular or clearing members, and for other Federal Reserve Banks, the functions of a clearing house. While the Federal Reserve Board has not by mandate required Federal Reserve Banks to collect checks drawn upon banks refusing to remit at par, yet, under its supervisory power, the Board may at any time require such collection. Defendants, therefore, allege that to interfere with the collection of such checks by presentation at the counter, as the plaintiffs in and by their said bill seek to do, would be to interfere with one of the functions of the Federal Reserve Board, viz: the supervision and direction of the activities of the Federal Reserve Banks in their capacities as clearing houses. Defendants say, moreover, that in all of their acts with respect to the collection and clearing of checks at par, they have been acting with the approval of the Federal Reserve Board, which Board is vested by law with the supervision and control of all Federal Reserve Banks.

Wherefore, these defendants pray that they be hence discharged with their reasonable costs in this behalf expended. Hollins N. Randolph, Robert S. Parker, Solicitors for Defendants. John W. Davis, of Counsel.

104 GEORGIA,
Fulton County:

Before me, the undersigned Notary Public, in and for said County, personally came M. B. Wellborn, who being duly sworn deposes and says that he is Governor of the Federal Reserve Bank of Atlanta, one of the defendants filing the above and foregoing answer, and that as such Governor he is authorized to make this affidavit for and on behalf of said Bank.

Deponent says that he has read over the allegations of the within and foregoing answer, and is familiar with the same. He says that all averments and allegations positively stated and charged therein are true, and that such allegations in said answer as are made upon information and belief, deponent verily believes to be true. M. B. Wellborn.

Sworn to and subscribed before me, this 30th day of June, 1921. Frank N. Allen, Notary Public, Fulton Co., Ga. (Notary's Seal.)

GEORGIA,
Fulton County:

Before me, the undersigned Notary Public, in and for said County, personally came M. B. Wellborn, who being duly sworn, deposes and says that he is one of the defendants filing the above and foregoing answer.

Deponent says that he has read over the allegations of the within and foregoing answer, and is familiar with the same. He says that all averments and allegations positively stated and charged
105 therein are true, and that such allegations in said answer as are made upon information and belief, deponent verily believes to be true. M. B. Wellborn.

Sworn to and subscribed before me, this 30th day of June, 1921. Frank N. Allen, Notary Public, Fulton Co., Ga. (Notary's Seal.)

GEORGIA,
Fulton County:

Before me, the undersigned Notary Public, in and for said County, personally came Joseph A. McCord, who being duly sworn deposes and says that he is one of the defendants filing the above and foregoing answer.

Deponent says that he has read over the allegations of the within and foregoing answer, and is familiar with the same. He says that all averments and allegations positively stated and charged therein are true, and that such allegations in said answer as are made upon information and belief, deponent verily believes to be true. Joseph A. McCord.

Sworn to and subscribed before me, this 30th day of June, 1921. Frank N. Allen, Notary Public, Fulton Co., Ga. (Notary's Seal.)

6 GEORGIA,
Fulton County:

Before me, the undersigned Notary Public, in and for said County, personally came L. C. Adelson, who being duly sworn deposes and says that he is one of the defendants filing the above and foregoing answer.

Deponent says that he has read over the allegations of the within and foregoing answer, and is familiar with the same. He says that all averments and allegations positively stated and charged therein are true, and that such allegations in said answer as are made upon information and belief, deponent verily believes to be true. L. C. Adelson.

Sworn to and subscribed before me, this 30th day of June, 1921. Frank N. Allen, Notary Public, Fulton Co., Ga. (Notary's Seal.)

GEORGIA,
Fulton County:

Before me, the undersigned Notary Public, in and for said County, personally came M. W. Bell, who being duly sworn deposes and says that he is one of the defendants filing the above and foregoing answer.

Deponent says that he has read over the allegations of the within and foregoing answer, and is familiar with the same. He says that all averments and allegations positively stated and charged therein are true, and that such allegations in said answer as are
107 made upon information and belief, deponent verily believes to be true. M. W. Bell.

Sworn to and subscribed before me, this 30th day of June, 1921. Frank N. Allen, Notary Public, Fulton Co., Ga. (Notary's Seal.)

Amendment to the Prayers of the Original Bill.

Now come the complainants in the above stated case by their solicitors and amend the prayers of the original bill therein by adding the following additional prayers, to-wit:

(7) That the defendants be permanently enjoined from publishing the name of any non-member bank that does not maintain with the Federal Reserve Bank of its district, a balance sufficient to offset the items in transit held for its account by the Federal Reserve Bank, on the so-called par lists of the Federal Reserve Bank in the Sixth District unless and until such non-member bank has given its consent to such publication.

(8) That the defendants be permanently enjoined from furnishing the names of any non-member bank in the Sixth Federal Reserve District that does not maintain with the Federal Reserve Bank
108 of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve Bank, of any Federal Reserve Bank in any other District, or to The Federal Reserve Board at Washington, D. C., for the purpose of having same published on the so-called par list of any Federal Reserve Bank, unless and until such non-member bank has given its assent to such use of its name.

(9) That the defendants be permanently enjoined from continuing the publication or authorizing any other Federal Reserve Bank or the Federal Reserve Board to continue the publication on any so-called par list, of the name of any non-member bank that does not maintain with the Federal Reserve Bank of its District a balance sufficient to offset the items in transit held for its account by the Federal Reserve Bank, unless such non-member bank has previously given its consent to such use of its name, and has not lawfully withdrawn, or does not lawfully withdraw its consent to such continued use of its name.

(10) That the defendants be permanently enjoined from publishing or using the names of such non-member banks contrary to the injunctions prayed for in the three preceding prayers with respect to any published list, whatsoever, that is designed to accomplish the same uses and purposes as the current so-called par lists, regardless of the name or names employed to designate such lists.

(11) That the defendant Federal Reserve Bank, its officers and agents, be permanently enjoined from accepting or receiving for collection or otherwise, any check on any non-member bank that does not maintain with the Federal Reserve Bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve Bank, and that has not agreed, and does not continue to agree, to remit the proceeds of any such check without charge for such remittance of the proceeds thereof, whether such charge be made under the description of exchange or otherwise.

(12) That the defendants be permanently enjoined from returning as dishonored, any check on such non-member banks, payment of which was refused solely because lawful exchange charges for remittance were not allowed. Alex. W. Smith, Orville A. Park, Solicitors for Plaintiffs.

Allowed and made a part of the record, Jany. 9, 1922. Beverly D. Evans, U. S. Judge, Presiding.

Amendment of January 11th, 1922.

Now comes the plaintiffs in the above stated case by their solicitors and by leave of the Court and amend the original bill in said case as follows:

1. Each plaintiff in this case and every other bank in the Sixth Federal Reserve District in like condition is affected by the par clearance campaign of the Federal Reserve system as it is prosecuted by any one of the Federal Reserve banks outside of said District as follows.

(a) Every additional bank added to the par list in the system increases by one the number of banks to which checks drawn on plaintiff's banks may go in regular business channels, and through ultimately to the defendant Reserve Bank or one of its branches swell the number of checks on plaintiff to be collected in cash over their counters if they persist in refusing to remit at par.

(*b*) Every additional bank in the Sixth District not a party to this case that may be added to the system increases by one the number of banks to which checks drawn on any other bank in the United States may go in regular course of business and through it to the Federal Reserve Bank or one of its branches outside of the Sixth District to swell the number of checks on such banks outside of the Sixth District that refuses to remit at par and that will be with checks received from other sources presented over its counter for payment in cash.

(*c*) Under the common policy promulgated and approved by the Federal Reserve Board for the guidance of all the twelve Reserve Banks in the system, plaintiff must expect the same methods of executing said policy to be adopted by the defendant bank as have been employed with success by any of the other Federal Reserve Banks and plaintiffs allege on information and belief that such methods will be adopted to coerce the plaintiffs to remit at par in the Sixth District that have been employed by Federal Re-
111 serve Banks to accomplish the same purpose in other Districts—such methods including not only those specified in the original bill and in the previous amendment thereof but also the returning of checks drawn on non-assenting banks as dishonored before such checks are even presented for payment and including derogatory notations on said checks affecting the credit of said banks that are transmitted to its depositors and customers and including such slander or attacks upon the credit and standing of such non-member banks as to seriously threaten and in some cases to destroy their power to continue business.

2. Plaintiffs hereby enlarge the scope of this bill by extending the class of banks in whose behalf it is filed, to all the country banks throughout the United States who are not members of the Federal Reserve System and have not agreed to remit at par for cash items sent them for collection. Alex W. Smith, Orville A. Park, Plaintiffs' Solicitors.

Order Allowing Amendment.

The within and foregoing amendment is allowed and order filed and made a part of the record of said case.

This January 11, 1922. Beverly D. Evans, U. S. Judge Presiding.

112 **Amended Answer.**

[Filed Jan. 12, 1922.]

IN THE

District Court of the United States for the Northern District of Georgia.

[Title omitted.]

Bill for Injunction, etc.

Come now the defendants, Federal Reserve Bank of Atlanta, M. B. Wellborn, Joseph A. McCord, L. C. Adelson and M. W. Bell, and without withdrawing the objections this day made to the amendment offered by the plaintiffs to the original bill in this cause, and without waiving any just and proper objection to the same, nevertheless, for further answer to said bill as so amended, say:

1. Defendants deny that the plaintiffs in this case, and every other bank in the Sixth Federal Reserve District in like condition, are affected by the par clearance campaign of the Federal Reserve System is it is prosecuted by any one of the Federal Reserve Banks outside of said district in the way and manner set forth in said amended bill, or by reason of any of the matters and things therein alleged.

2. Defendants deny that under any policy promulgated and approved by the Federal Reserve Board for the guidance of the Federal Reserve Banks, plaintiffs are entitled to expect the same methods of executing said policy to be adopted by the de-
113 fendant bank as have been employed with success by any of the other Federal Reserve Banks, and, on the contrary, the defendants aver the facts to be as set forth in the answers heretofore made and filed by the individual defendants, M. B. Wellborn, Joseph A. McCord, L. C. Adelson and M. W. Bell, to interrogatories propounded by the plaintiff herein under rules and orders of this Honorable Court and now appearing of record in this cause, the 30th of said interrogatories, together with the answer thereto, being in the following language, to-wit:

"Q. 30. Were not such methods to be the same in substance and effect as those adopted in the other districts in which universal par clearance had already been undertaken? And were not the methods practically directed from the offices of the Federal Reserve Board at Washington?"

"A. 30. Each Federal Reserve Bank directs its own affairs and the procedure for making possible the clearance system contemplated by the Federal Reserve Act was and is entirely within the province of each. There were no directions from the officers of the Federal Reserve Board in Washington as to what procedure should

be employed; the Board, in construing the Act, issued Regulations pursuant thereto, but the administration of the points involved is left to each Federal Reserve Bank, as stated above."

and the 48th of said interrogatories, together with the answer thereto, being in the following language, to-wit:

"Q. 48. What general policy has the board of directors of the Federal Reserve Bank of Atlanta ever adopted and followed
114 out on their own initiative and without let or hindrance from the Reserve Board?

"A. 48. All of the general policies inaugurated by the Federal Reserve Bank of Atlanta are initiated, promulgated and put into effect by its officers, under the general direction, control and supervision of its Board of Directors. The Federal Reserve Board simply supervises the execution of these policies, to see to it that they conform to the provisions of the Federal Reserve Act and the Regulations promulgated by the Board."

3. Defendants further deny that they have adopted or purpose to adopt, any methods to coerce the plaintiffs to remit at par in the Sixth District such as those specified either in the original bill or any amendment thereto, including those set out in the present amendment, and specifically the returning of checks drawn on non-assenting banks as dishonored before such checks are even presented for payment and including derogatory notations on said checks affecting the credit of said banks that are transmitted to its depositors and customers, and including such slander or attacks upon the credit and standing of such non-member banks as to seriously threaten and in some cases to destroy their power to continue business. On the contrary, defendants aver that the only methods which they purpose to adopt or employ with any bank or banks in the Sixth Federal Reserve District are those set forth in the answer of the individual defendants to the interrogatories aforesaid, and now of record in this cause, and they expressly disclaim any intention or design to proceed otherwise than as therein set forth; the 6th of said interrogatories, together with the answers thereto:
115 being in the following language, to-wit:

"Q. 6. If not, please pursue said letter and state what methods of collection the Federal Reserve Bank of Atlanta, acting through its appropriate officers and agents, intend to adopt that would prove embarrassing to the bank to whom said letter was addressed."

"A. 6. Neither the Federal Reserve Bank of Atlanta, nor any of its officers had any intention of adopting a method which would prove embarrassing, annoying or expensive to the bank in question or to any other bank. Neither the writer nor any other officer of the Federal Reserve Bank desired to employ any methods which would embarrass, annoy or cause expense to any bank whatsoever. The method in contemplation was simply this: In case a non-member state bank should not be willing to remit in available exchange at par through the mails for checks sent by the Federal Reserve Bank of Atlanta for payment, the Federal Reserve Bank,

in order to collect such checks in the only other method available, would forward the checks as and when received, without accumulation and in the regular course of business, to an agent or agents located in the same town as the bank on which said checks were drawn, or would send one of its own representatives with the checks in question to such town, such agent to be instructed immediately to present the checks across the counter for payment either in the usual exchange at par or in cash for the full amount thereof, at the option of the drawee bank. In case the drawee bank refused to pay such checks either in such exchange at par or in cash, the
116 agents were to be instructed to have the check protested for non-payment and thereafter return the check to the Federal Reserve Bank of Atlanta."

and the 25th of said interrogatories, together with the answer thereto, being in the following language, to-wit:

"Q. 25. If the purpose of the Federal Reserve Bank in sending checks on non-member banks by special agent or agencies when they refuse to waive their rights to charge exchange in regular course of business is merely to collect the amount called for by such checks and there is no question of solvency of the payee bank, why should such agent or agency not accept the payment of such check in the bank draft of such payee bank convertible at par rather than in currency?

"A. 25. If there is no question in the mind of the Federal Reserve Bank as to the solvency of the paying or drawee bank, there would be no reason why such agent or agency should not accept, in payment for such checks, a bank draft drawn by such bank which is payable at par. Inasmuch, however, as one of the chief purposes of the collection system of the Federal Banks is to expedite the collection and final payment of checks, it must have some discretion as to the kind of exchange which it will accept in payment of its cash letter, so that while the drawee bank would have the option of paying either in cash or exchange, nevertheless, when payment is made in exchange, it must be in the usual exchange not calculated unduly to delay final payment. In order that when payment is
117 made in exchange, rather than in cash, the exchange will be that kind of exchange acceptable to the Federal Reserve Bank in the sense just described, it may be necessary, because of the difficulties always in employing agents who are unable to use a final discretion in this matter, to give specific instructions as to what general classes of exchange would be acceptable."

and the 62nd of said interrogatories, together with the answer thereto, being in the following language, to-wit:

"Q. 62. Is such a demand not for the purpose of forcing that bank to agree to remit at par? If not, what is the purpose? State fully.

"A. 62. The sole and only purpose of the Federal Reserve Bank of Atlanta in the matter in question is to render to its member banks and to its clearing member banks depositing checks with it for col-

lection the service of collecting the checks at par, as contemplated by the provisions of the Federal Reserve Act."

and the 189th of said interrogatories, together with the answer thereto, being in the following language, to-wit:

"Q. 189. If you say that your only purpose is to make collection for the amount called for by the check, why are you not willing to receive in payment of said check draft of the payee bank on its Atlanta correspondent, or upon its New York correspondent, for the full amount of the check or checks presented?

"A. 189. The Federal Reserve Bank will be willing to accept in payment a draft of the drawee bank on its Atlanta correspondent or a draft upon any other solvent bank, which is collectible at par."

118 4. Defendants deny that any other banks throughout the United States, not members of the Federal Reserve System or located within the Sixth Federal Reserve District, are proper parties to this cause, either in person or by representation, or that any relief can or should be afforded any such banks herein.

And now having fully answered, the defendants pray that they be hence dismissed, etc. Hollins N. Randolph, Robert S. Parker, Solicitors for Defendants. John W. Davis, of Counsel.

GEORGIA,
Fulton County:

Before me, the undersigned Notary Public in and for said County, personally came M. B. Wellborn, who being duly sworn deposes and says that he is Governor of the Federal Reserve Bank of Atlanta, one of the defendants filing the above and foregoing amended answer, and that as such Governor he is authorized to make this affidavit for and on behalf of said bank and for himself, and, also before me came Joseph A. McCord, L. C. Adelson and M. W. Bell, who being duly sworn depose and say that they are the defendants filing the above and foregoing answer.

Deponents say that they have read over the allegations of the within and foregoing answer, and are familiar with the same.

119 They say that all averments and allegations positively stated and charged therein are true, and that such allegations in said answer as are made upon information and belief, deponents verily believe to be true. M. B. Wellborn. Joseph A. McCord. L. C. Adelson. M. H. Bell.

Sworn to and subscribed before me, this 11th day of January, 1922. Frank N. Allen, Notary Public, Fulton County, Georgia. (Notarial Seal.)

[File endorsement omitted.]

120 Supplement No. 1.

IN THE

District Court of the United States, Northern District of Georgia.

[Title omitted.]

Transcript of Directors' Minutes and Correspondence of the Federal Reserve Banks in Par Clearance Campaign.

All in Evidence in said Case.

Alexander W. Smith, Of Counsel.

121 **Index.**

Adelson letters to—	Page.
Aliceville Bank, January 6, 1920	62
Barbour County Bank, January 6, 1920	56
Bartow Bank, February 24, 1920	103
Bartow Bank, March 1, 1920	105
Bluff City Bank, July 5, 1919	16
Bluff City Bank, January 7, 1919	20
Bluff City Bank, December 20, 1919	31
Bourg State Bank, January 17, 1920	98
Citronelle Bank, January 16, 1920	80
Citizens Bank, Rogersville, January 7, 1920	60
Citizens Savings Bank and Trust Company, September 18, 1919	18
Chaton Bank, January 1, 1920	52
Clearwater Bank, February 26, 1920	94
Clinton Bank, January 14, 1920	77
Commercial Bank and Trust Company, December 31, 1919	38
Dade City Bank, January 21, 1920	83
Davisboro Bank, April 9, 1920	120
Enterprise Banking Company, February 9, 1920	96
Evergreen Bank, June 1, 1920	129
Evergreen Bank, June 7, 1920	132
Fairhope Bank, January 6, 1920	45
Farmers & Merchants Bank, Ocean Springs, January 17, 1920	81
Farmers & Merchants Bank, Tennille, January 22, 1920	82
Farmers Bank, Iron City, January 10, 1920	75
First National Bank, Cartersville, May 21, 1919	12
First National Bank, Cartersville, May 28, 1919	14
First National Bank, Cartersville, June 5, 1919	14

Page.

Fort Lauderdale Bank, January 6, 1920 47
Fort Meade Bank, December 31, 1919 54
Goodlettsville Bank, December 10, 1919 22
Goodlettsvile Bank, December 20, 1919 23
Hattiesburg Bank, January 10, 1920 68
Hattiesburg Bank, March 15, 1920 110
Holmes County Bank, February 16, 1920 99
Iron City Bank, January 12, 1920 75
Jonesboro Bank, January 14, 1920 78
Kingston Bank, December 20, 1919 31
Kingston Bank, December 23, 1919 32
122 Lamar County Bank, December 31, 1919 41
Marion Trust and Banking Company, January 1, 1920 57
Merchants & Farmers Bank, Davisboro, April 9, 1920 .. 120
Merchants and Farmers Bank, Roanoke, December 31, 1919 49
Ocean Springs Bank, January 17, 1920 81
Peoples Bank, Evergreen, June 1, 1920 19
Phifer Bank, February 24, 1920 101
Rogersville Bank, January 7, 1920 60
Soddy Banking Company, December 31, 1919 43
Tennille Bank, January 22, 1920 82
Union Bank, Clinton, January 14, 1920 77
Villa Rica Bank, December 31, 1919 35
Vonone Bank, January 7, 1920 64
Watkins Banking Company, January 8, 1920 66
Aliceville Bank to Wellborn, January 3, 1920 61
Barbour County to Wellborn, December 31, 1919 55
Bartow Bank to Jacksonville Branch, February 19, 1920 ... 103
Bartow Bank to Jacksonville Branch, February 28, 1920 104
Bluff City Bank to Adelson, August 8, 1919 18
Bluff City Bank to Adelson, November 20, 1919 21
Board's instructions to *to* par clearance 3
Bourg State Bank to Adelson, February 13, 1920 97
Bourg State Bank to Adelson, February 24, 1920 99
Cash payments demanded 56, 85, 89, 120, 122
Chaton Bank to Wellborn, December 30, 1919 51
Citiens Bank of Rogersville to Wellborn, January 1, 1920 .. 59
Citronelle Bank to Adelson, January 15, 1920 79
Clearwater Bank to Adelson, February 24, 1920 102
Clinton Union Bank to Adelson, January 12, 1920 76
Commercial Bank and Trust Company to Wellborn, December 29, 1919 36
Dade City Bank to Adelson, January 22, 1920 83
Davisboro Bank to Adelson, April 8, 1920 119
Enterprise Bank to Wellborn, February 7, 1920 96

Page.

Embarrassing, annoying, and expensive methods threatened in Exhibit B are repeated to—

Aliceville Bank 63
Barbour County Bank 56
Clearwater Bank 95
Commercial Bank and Trust Company 38
Fairhope Bank 45
Fort Meade 54
123 Hattiesburg Bank 45
Iron City Bank 75, 76
Jonesboro Bank 78
Lamar County Bank 41
Lauderdale State Bank 47
Merchants and Farmers Bank 49
Ocean Springs Bank 81
Soddy Banking Company 43
Union Bank 34
Villa Rica Bank 34
Evergreen Bank to Bell, June 1, 1920 129
Evergreen Bank to Bell, June 3, 1920 130
Exhibit A to original bill 24
Exhibit B to original bill 28
Fairhope Bank to Wellborn, December 30, 1919 44
Farmers Bank, Iron City, to Wellborn, January 12, 1920 75
Farmers and Merchants Bank, Ocean Springs, to Adelson, January 15, 1920 80
Farmers and Merchants Bank, Tennille, to Adelson, January 21, 1920 82
Federal Reserve Banks unite on par clearance 12, 14, 15, 16, 81, 84
First National Bank, Cartersville, to Adelson, May 1, 1919 .. 13
First National Bank, Quincy, to Jacksonville Branch, February 13, 1920 90
Form letters 7, 14, 15, 17, 19, 24, 28, 84, 111, 121, 125
Fort Lauderdale Bank to Welborn, December 30, 1919 47
Fort Meade Bank to Wellborn, January 29, 1919 53
Goodlettesville Bank to Adelson, December 6, 1919 21
Harding to House Committee, May 5, 1920 125
Harding to Congressman, April 12, 1920 121
Hattiesburg Bank to Welborn, December 31, 1919; January 8, 1920; January 12, 1920 ..... 36, 67, 70
Hattiesburg Bank to Wellborn, January 20, 1920; March 2, 1920 ..... 72, 105
High Springs—Form letter to, January 30, 1920 84
High Springs to Jacksonville Branch, February 22, 1920 .. 87
Holmes County Bank, Jacksonville Branch, February 5, 1920 91
Inducement of spying on neighbors 12, 61, 63
Instructions of Board as to par clearance 3
Iron City Bank to Wellborn, January 12, 1920 75

Page.

Jacksonville Branch to First National Bank of Quincy, February 17, 1920 91
124 Jacksonville to High Springs, January 30, 1920; February 7, 1920; February 9, 1920 ..... 84, 86, 86
Jacksonville to Quincy State Bank, January 31, 1920 88
Jonesboro Bank to Wellborn, January 12, 1920 78
Kingston Bank to Adelson, December 22, 1919 31
Lamar County Bank to Wellborn, December 29, 1919 39
Marion Banking Company to Wellborn, December 31, 1919 58
Merchants and Farmers Bank, Davisboro to Adelson, April 8, 1920 119
Merchants and Farmers Bank, Roanoke, to Welborn, December 30, 1919 48
Minutes of directors' meetings 1-6
Ocean Springs Bank to Adelson, January 15, 1920 80
Par clearance campaign ordered to proceed 3
Par list distributed before items are received 57, 68, 80, 81, 83, 99
Par remittance by members not practiced 42
Peoples Bank, Evergreen, to Bell, June 1, 1920; June 4, 1920 ..... 129, 131, 132
Phifer State Bank to Jacksonville Branch, February 19, 1920 100
Quincy State Bank to Jacksonville Branch, February 5, 1920 89
Rogersville Bank to Wellborn, January 1, 1920 59
Soddy Banking Company to Wellborn, December 29, 1919 .. 42
Spying on neighbors encouraged 12, 61, 63
Surrenders caused by threats—
Alicevile Bank 61
Bourg State Bank 97
Citronelle Bank 79
Clearwater Bank 102
Dade City Bank 87
Enterprise Bank 96
Haines City Bank 107
Hattiesburg Bank 67
Marion County Bank 58
Rogersville Bank 59
Watkins Banking Company 65
Tennille Bank to Adelson, January 21, 1920 82
Union Bank to Adelson, January 12, 1920 76
Villa Rica Bank to Wellborn, January 29, 1919 34
Vonone Bank to Wellborn, January 29, 1919 61
Watkins Banking Company to Wellborn, January 6, 1920 .. 65
Wellborn to Clearwater Bank, February 6, 1920 93
Wellborn to Hattiesburg Bank 35, 68, 71, 73
Wellborn to Non Par Banks (1,050 in number) 28

125 **Extracts From the Minutes of the Board of Directors' Meetings of the Federal Reserve Bank of Atlanta From October 19, 1914, Through December 10, 1921, Concerning Par Clearance.**

Extract, May 15th, 1919. Page 214.

Governor Wellborn called the Board's attention to a communication addressed to him by Deputy Governor Adelson containing a suggestion as to the collection of checks on non-member State Banks through Express Companies; and upon motion by Mr. Ottley, it was voted that action on this matter be postponed until the June meeting of the Board, and that in the interim the Secretary furnish a copy of Mr. Adelson's letter to each of the Directors.

Extract, June 13th, 1919. Page 219.

The Board then took up for consideration, the plan submitted by Deputy Governor Adelson with reference to collecting checks on non-member banks through express companies. The Chairman requested the Secretary to read a letter received from Governor Harding, under date of June 5th, dealing with this subject and suggesting therein that it might be well before putting into operation such a plan to have a representative of the Federal Reserve Bank visit every bank. No definite action was taken, other than the Board voted to leave the matter to the Governor of the Bank and the Chairman of the Board as to sending out representatives to the banks.

Extract, July 11th, 1919. Page 222.

Governor Wellborn also advised that during the month of June, 23 non-member banks had been added to our Par List, making a total net addition since January 1st of 69.

126 *Extract, November 14th, 1919. Page 244.*

The Board voted to request the Chairman to call a special meeting of the Board of Directors at some time subsequent to the return of Governor Wellborn from the Conference of Governors, in order that there might be discussed the question of exchange, and of getting the entire district on a par clearing basis.

Extract, December 11th, 1919. Page 245.

The Board then took up for consideration the matter of Par Clearings.

Deputy Governor Adelson was called before the Board and made a statement as to the present number of banks on the Par List, stating that we were unable to collect items on the following number of points in our District:

Alabama	202	Florida	140
Georgia	510	Louisiana	103
Mississippi	102	Tennessee	184

and that we were collecting on a total of 778 member and non-member banks in our District, out of a total of 2,018 banks in the District.

After the matter had been discussed in its various details, Captain Hartford offered a motion that the officers of the Bank be authorized to proceed with the work and incur any necessary expense.

In reference to this motion Mr. McCrary spoke, recommending that we delay this action as far as possible, and Mr. Ottley stated that he was originally in favor of exchange, but called attention to the fact that it was undoubtedly the intention of the Act that we should have Par Clearing. He stated he was, and always had been, an ardent advocate of the Federal Reserve System, and that if we accepted it as a System we are compelled to accept all of it, and that he was therefore in favor of carrying out that part of the Act with reference to Par Clearing.

127 Mr. Kittles stated that while he was not in favor of Par Clearing, if it was the law we should proceed to enforce it.

At the request of the Directors, the Governor, the Deputy Governor and the Secretary were requested to draw up a resolution expressing the view of the Board of Directors, which request was complied with, and the Board of Directors voted to adopt the following resolution:

"Whereas, Under the terms of Section 13 and Section 16 of the Federal Reserve Act, Federal Reserve Banks are required to receive on deposit checks or drafts payable upon presentation; and

Whereas, The other Federal Reserve Banks have made rapid strides in putting their respective districts upon a par basis; and

Whereas, This Bank has not kept pace with the rapid strides of other Federal Reserve Banks in putting par clearance into effect; and

Whereas, At recent conferences of Federal Reserve Agents and Governors of the Federal Reserve Banks, the sentiment was expressed that the entire country should be put on a par clearance basis in accordance with the Federal Reserve Act;

Be it Resolved, That the Board of Directors of the Federal Reserve Bank of Atlanta does hereby instruct the officers of the Bank to adopt such plans and incur any necessary expense in order to effectively arrange for the par clearance of checks and drafts drawn upon present non-par remitting banks payable upon presentation, received upon deposit by the Federal Reserve Bank of Atlanta."

All members present voted in favor of the resolution.

128 *Extract, January 9th, 1920. Page 255.*

Governor Wellborn discussed at some length the question of the Par Clearing Campaign now under way, and stated that no great amount of criticism had been received so far. At this juncture the

Board took up for discussion the recent article in the press concerning statements purported to have been made by Mr. Bell, Cashier of the Federal Reserve Bank, in connection with par clearings. It seemed to be the consensus of opinion of the Directors and Governor Wellborn that this discussion by Mr. Bell was ill-advised; Governor Wellborn stated that Mr. Bell had advised him that the report as contained in the newspaper was misleading in many respects, and that while he had used certain terms in his speech, that they had been juggled in giving out the press notice.

Mr. Adelson was called before the Board in connection with this Par Clearing question, and stated that it had been the idea to take up the campaign by small zones, say 25 to 30 counties at a time, the same plan to apply in the Branch Bank territories, and that he thought the Operating Department of the Bank would be able to start the campaign within a couple of weeks. He stated that he had sent out about 1,050 letters and that about 200 replies had been received.

Mr. Kittles was of the opinion that Par Clearing could best be brought about by sending items to all banks to develop whether they would clear at par. After some discussion the Secretary was asked to read the resolutions passed at the last meeting of the Board, which developed the fact that the officers of the Bank had been instructed to proceed with the campaign as they saw best from time to time, and the discussion was closed.

Extract, February 13th, 1920. Page 261.

* * * The various members of the Board also discussed the question of Par Clearance, giving Mr. Wells the benefit of their views on this and other phases of the banking business in this district.

Governor Wellborn made his usual monthly report to the Board, calling attention to the earnings and expenses of the Bank. The Governor also spoke of the campaign being conducted in the matter of par clearance and the difficulties being met with, especially in Alabama. He stated the plan known as the Kittles Plan had worked out very well until the Superintendent of Banks of the State of Alabama instructed State banks to demand that express companies guarantee prior endorsements. Governor Wellborn also called attention to the fact that representatives sent from this Bank to Dothan, Alabama, in connection with par clearance work had reported that the member banks there were availing themselves of the privilege of obtaining money free from the Federal Reserve Bank, and, in turn, giving it to the State Bank at Dothan to settle for various checks presented by our representative. There was a considerable discussion regarding this particular matter and it appeared to be the consensus of opinion of the entire Board that the Federal Reserve Bank should nevertheless ship money free to all member banks and fight the matter out on some line other than refusing to ship money.

Extract, March 12th, 1920.

The Governor called the Board's attention to legislation recently enacted by the State of Mississippi whereby it is made mandatory by the Banks of that State to charge exchange. The Governor and members of the Board seemed to be of the opinion that the law would not hold good but no action was taken in view of pending litigation in connection with this question.

130 *Extract, April 16th, 1920. Page 269.*

Government Wellborn requested that the Board express to him their wishes in regard to the par clearance situation. Upon a motion duly made and seconded, the Board authorized the Governor and the Executive Committee to proceed within the next thirty days to establish par collection, using such procedure as they deem necessary.

Extract, December 10th, 1920. Page 335.

The Board voted to re-elect Mr. Hollins N. Randolph, General Counsel of the Federal Reserve Bank of Atlanta, and instructed the Secretary to draw up proper resolution, to be approved by the Governor and Chairman, expressing the Board's approval of the manner in which Mr. Randolph has handled the par clearance case; the said resolution being as follows:

Be it Resolved, That in the re-election of Mr. Hollins N. Randolph as General Counsel for the Federal Reserve Bank of Atlanta, the Board of Directors desire to express their hearty approval of the manner in which Mr. Randolph has discharged his duties as General Counsel, and to especially commend him on the dignified, high-toned methods used in the par clearance suit, and the splendid results achieved.

Be it further Resolved, That this resolution be spread upon the minutes of the meeting of the Board of Directors of the Federal Reserve Bank of Atlanta, and that the Secretary be instructed to forward certified copy to Mr. Randolph.

Extract, March 11th, 1921. Page 355.

Chairman McCord called the Board's attention to a letter he had received from General Counsel Randolph advising that the Supreme Court would hear arguments in the par clearance case on April 11th.

131 **Correspondence of the Federal Reserve Bank of Atlanta With Respect to the Par Clearance Campaign.**

Explanatory Note.

Where signatures to letters show blank the title "Governor" on letterheads showing "Federal Reserve Board" imports signature on original of W. P. G. Harding, Governor of Federal Reserve Board.
The title "Governor" elsewhere imports signature of M. B. Wellborn, Governor of the Federal Reserve Bank of Atlanta.
The title "Deputy Governor" imports signature of L. C. Adelson, Deputy Governor of the Federal Reserve Bank of Atlanta.
The absence of signatures is due to the use of copies as evidence in lieu of the originals.

Federal Reserve Board,

Washington.

August 11, 1917.

Dear Sir: The Board deems it advisable that there should be a thorough understanding on the part of the Federal reserve banks and of the member banks of its attitude in relation to the collection of "maturing notes and bills," and wishes to invite your attention to the distinction between the par clearing and collection of checks and drafts drawn on member banks and the collection of notes and drafts made by or drawn upon individuals, firms, or corporations other than banks.

Section 13 of the Federal Reserve Act, as amended by the Act approved June 21, 1917, provides in part that:

"Provided, further, that nothing in this or any other sec-
132 tion of this Act shall be construed as prohibiting a member or non-member bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks."

The question has been raised whether this provision of the law would prohibit a member bank from charging a Federal reserve bank for collecting and remitting for a note or bill of exchange forwarded to it by a Federal reserve bank for that purpose. In other words, does this provision of the law apply to promissory notes and bills of exchange as well as to checks and drafts on member banks? The Federal Reserve Act in several sections clearly distinguishes between "checks and drafts" on the one hand and "notes and bills" on the other. For instance, the first paragraph of Section 13 authorizes Federal reserve banks to receive from member banks deposits of "checks and drafts," without limiting the purpose for which

the deposit must be made. The same paragraph authorizes a Federal reserve bank to receive "maturing notes and bills," but "for collection" only. So, also, Section 16 of the Act requires a Federal reserve bank to receive deposits of "checks and drafts drawn upon any of its depositors" (i. e., upon member banks and upon banks carrying balances with Federal reserve banks), but nowhere is there any requirement that "maturing notes and bills" must be received at par, and it is obvious that such items were eliminated for the reason that no bank can properly be forced to credit at par an unmatured or uncollected note or bill. Not being in the nature of a cash item, such an instrument is necessarily subject to a discount. In other words, Congress in this section distinguishes between the ordinary check and bank draft and the note and bill of exchange.

133 With these lights before us, a proper construction of the so-called "Hardwick amendment" to Section 13, which in terms provides that—

"nothing in the Act shall be construed as prohibiting a member or non-member bank from making charges * * * for collection or payment of checks and drafts and remission therefor by exchange or otherwise, but no such charges shall be made against the Federal reserve banks,"

must necessarily draw a distinction between checks and drafts (on banks) and promissory notes and bills of exchange. Both the wording of this amendment and the purpose for which it was enacted necessarily lead to the conclusion that it was not intended to prohibit a member bank from charging a Federal reserve bank for services rendered in collecting bills and notes which the Federal reserve bank sends to it for that purpose. The phrase, "but no such charges shall be made against the Federal reserve banks" is construed by the Board as being intended solely for the purpose of preserving the check clearing and collection system inaugurated by the various Federal reserve banks; and there was no intention, either express or implied, to prohibit member banks or non-member banks from making reasonable charges against Federal reserve banks for services rendered in collecting maturing notes and bills.

The Board holds therefore, that charges for transactions of this kind may be made now with the same propriety as before the passage of the Act of June 21, 1917. Such charges would seem to be permissible upon the hypothesis that notes and bills thus sent to a member bank by the Federal reserve bank for collection, are not drawn on the member bank, but upon some third party; and it would be unreasonable and unfair to permit a Federal reserve bank to select any particular member or non-member bank to act as its intermediary or agent for the purpose of collecting and

134 remitting free of charge all of the notes and bills held by it for collection and payable in any particular city or locality. Such service must be performed by the member or non-member bank only as a matter of contract, and not because of any legal or moral

obligation upon such bank to make collections gratis for the Federal reserve bank or for the banks for whom it acts as agent.

In the case of "checks and drafts drawn upon any of its depositors" (i. e., banks), however, the law provides that no charge for the service of collection, and payment and remission by exchange or otherwise, should be assessed against Federal reserve banks. The Board holds that the reason for this is that the Federal reserve banks are affording all member banks certain reciprocal advantages in the collection and clearance of checks, and because the Federal reserve banks are obligated to receive checks at par they may properly expect remission therefor on the same basis. In other words, the prohibition in the Hardwick amendment relating to the charges on the collection of checks and drafts on banks for Federal reserve banks, is merely an equalizing element in perfecting the check collection system, which must afford reciprocal privileges and advantages with the least possible expense to all concerned.

The paragraph of Section 16 which immediately follows the one which requires Federal reserve banks to receive on deposit checks at par, authorizes the Federal Reserve Board at its discretion, to exercise the functions of a clearing house for Federal reserve banks, or to designate a Federal reserve bank to exercise such functions, and to require each Federal reserve bank to exercise the functions of a clearing house for its member banks. In clearing house cities checks on member banks properly go to the clearing house, but promissory notes and drafts or bills of exchange payable by third parties, are not sent to the clearing house but are collected independently by the holding bank.

155 For these reasons the Federal Reserve Board is of the opinion that not only is it clear that the Hardwick amendment does not apply to the right of a member bank to charge the Federal reserve bank for the service of collecting notes and bills of exchange, but also that there is no sound reason or policy which would require that the Federal reserve banks should be immune from such a charge. While the Board must insist upon a strict compliance by the member banks with the law requiring par collection of checks for Federal reserve banks, it has no desire to deprive any bank of any compensation allowed by the law and to which the bank may be reasonably entitled. Because of competition, banks are performing many service free of charge which involve them in expense and for which they are justly entitled to remuneration.

In the opinion of the Board, it should be the aim of the Federal reserve banks in developing plans for the collection of "maturing notes and bills," to offer efficient service, but they should be compensated and protected against any abuse or expense in performing this service, and this principle applies, of course, to member banks.

It seems that some apprehension exists on the part of many member banks that the clearing of checks at par is but a prelude to a requirement that they make no charge for checks and drafts received from them for deposit and credit, or for collection and remittance from others than a Federal reserve bank. It appears, however, that the provisions of the so-called Hardwick amendment clearly preserve the

right of any member bank to make a reasonable charge against depositors or banks other than Federal reserve banks, not to exceed one-tenth of one per centum, for such services, the amount of such charge to be determined and regulated by the Federal Reserve Board.

The Board would request that this letter be brought to the attention of your directors at the next meeting, and you are at liberty
136 to communicate the views of the Board to any of your member banks which may be interested. Very truly yours,
—— ——, Governor.

Federal Reserve Bank of Atlanta.

May 21, 1919.

First National Bank, Cartersville, Ga.

GENTLEMEN: In order that you and all other member banks may derive greater benefits from the clearing and collection facilities afforded by the Federal Reserve System, all the Federal Reserve Banks are extending every effort to obtain additions to our part list.

Since January 1st, 1919, a total of 1,270 banks have been added to the par list, but there are still a large number of solvent banks whose names do not appear thereon, and we, in coöperation with the other Federal Reserve Banks are continuing our efforts to the end that the number of banks on the par list shall be further increased, and that in the course of time there will be brought into existence a national par list.

You can help us to add at least one name to the par list by authorizing us to send to you for collection and remittance or credit, at par, items drawn on the Bank of Cartersville, who for reasons of their own have so far declined to remit at par for items drawn upon them. By doing this, you will be contributing to the enlargement of the par collection facilities of the Federal Reserve System, and at the same time, derive the benefits accruing to the handling of checks drawn upon your neighbor.

137 Thanking you in anticipation for a favorable reply, we are,
Very truly yours, —— ——, Deputy Governor. L.C.A.D.

The First National Bank.

Cartersville, Ga., May 23rd, 1919.

Mr. L. C. Adelson, Deputy Governor, Federal Reserve Bank, Atlanta Ga.

DEAR SIR: We have your letter of the twenty-first, asking that we receive from you and remit for at par such checks that you might handle on the Bank of Cartersville, thereby contributing one more name to the par list of the System.

Our compensation for this service being the knowledge that we are helping enlarge the par list, and the further advantage of handling such checks on our neighbor that we would not otherwise see.

We have carefully considered the proposition and while we would be glad to accede to your request and to help the Reserve System at any and all times, we rather think that the service thus rendered would be out of proportion to the compensation received, and for this reason we would not care to accept your proposition at this time.

We thank you, however, for making us this offer, and beg to remain, Yours very truly, (Signed) Jos. S. Calhoun, President.

138 Federal Reserve Bank of Atlanta.

May 28, 1919.

Mr. Jos. S. Calhoun, President, First National Bank, Cartersville, Georgia.

DEAR SIR: We have your letter of May 23rd, and regret to note that you do not feel justified in handling for us at par items on the Bank of Cartersville.

In making our request, we did so on the assumption that as a member of the Federal Reserve System and having at your disposal the wide par facilities that have been made possible through the establisment of the Federal Reserve collection system, you would be willing by way of reciprocation to assist in its further enlargement. A great many of the member banks of this district have readily acceded to our request, and we hope you will give the matter further consideration and decide to do likewise. Very truly yours, —— ——, Deputy Governor. LCA:D.

Federal Reserve Bank of Atlanta.

June 5, 1919.

On May 26th we wrote you with reference to the efforts that are being made by the Federal Reserve Banks to further enlarge the par collecting facilities of the Federal Reserve System, and asking your co-operation by handling for us, at par, items on the Bank of Luverne, and the Farmers Bank, of your city.

139 We have not received reply, and presume our letter was overlooked. We trust you have given the matter favorable consideration and that you will advise us to that effect.

Awaiting the favor of your reply, we are, Yours very truly, —— ——, Deputy Governor. LCA:C.

Federal Reserve Bank of Atlanta.

July 12, 1919.

We are again approaching you on the subject of your remitting at par for items drawn upon you that we may send to you for collection and remittance.

The twelve Federal Reserve Banks are uniting in their efforts to bring about the establishment of a national par list, and rapid strides are now being made in that direction. That the non-mem-

ber banks in the country are realizing the high degree of service that is rendered to their depositors, by making their depositors' checks current at par, is attested by the fact that the names of over 11,000 non-member banks now appear in the par list of the Federal Reserve System.

It is no doubt the desire of your good bank to accord to your customers a maximum of service, and by remitting at par for their checks drawn upon you, thus insuring a ready acceptance of such checks by the business interests of the country, you would render a service to your depositors that, when generally known, is sure to bring you additional business.

In return for the service you would thus render us, our entire par list (now containing the names of over 20,000 banks) would be at your disposal, and the balances created by the items you would send us could be used in settlement of the items we would send you, or you could send us currency, at our expense, in par or full remittance for our items.

140 We hope you will give the matter the favorable consideration it deserves, and awaiting the courtesy of your reply, we are, Yours very truly, —— ——, Deputy Governor. LCA:D.

NOTE.—Form letter.

July 5, 1919.

Bluff City Bank, Bluff City, Tennessee.

GENTLEMEN: We are again approaching you on the subject of your remitting at par, for items drawn upon you that we may send to you for collection and remittance.

The twelve Federal Reserve Banks are uniting in their effort to bring about the establishment of a national par list, and rapid strides are now being made in that direction. That the non-member banks in the country are realizing the high degree of service that is rendered to their depositors, by making their depositors' checks current at par, is attested by the fact that the names of over 11,000 non-member banks now appear in the par list of the Federal Reserve System.

It is no doubt the desire of your good bank to accord to your customers a maximum of service, and by remitting at par for their checks drawn upon you, thus insuring a ready acceptance of such checks by the business interests of the country, you would render a service to your depositors that, when generally known, is sure to bring to you additional business.

In return for the service you would thus render us, our entire par list (now containing the names of over 20,000) would be at your disposal and the balances created by the items you would send us could be used in settlement of the items we would send

141 you, or you could send us currency, at our expense, in par or full remittance for our items.

We hope you will give the matter the favorable consideration it deserves, and awaiting the courtesy of your reply, we are, Yours very truly, —— ——, Deputy Governor. LCA:W.

Federal Reserve Bank of Atlanta.

August 8, 1919.

On July 12, we wrote you asking your co-operation in bringing about a national par list, by remitting to us at par for items drawn upon your good bank, to which we do not appear to have received reply.

Since our last letter, more than 500 banks, by permitting their names to be added to the Federal Reserve System par list, have joined with the 20,000 other institutions that were already on the par list, in recognizing the par remittance of checks drawn upon them is an essential to the complete service that is due to their depositors.

To give the checks of your customers the same standing in the commercial world as the checks drawn on banks that are on our par list, it is to your interest that you agree to remit at par, and we trust you will advise us accordingly, so that the name of your institution may appear in the next issue, which will be printed shortly. Yours very truly, —— ——, Deputy Governor. LCA/LB.

NOTE.—Form letter.

112

Aug. 8, 1919.

Bluff City Bank, Bluff City, Tenn.

GENTLEMEN: On July 5, we wrote you asking your co-operation in bringing about a national par list, by remitting to us at par for items drawn upon your good bank to which we do not appear to have received reply.

Since our last letter, more than 500 banks, by permitting their names to be added to the Federal Reserve System par list, have joined with the 20,000 other institutions that were already on the par list, in recognizing the par remittance of checks drawn upon them is an essential to the complete service that is due to their depositors.

To give the checks of your customers the same standing in the commercial world as the checks drawn on banks that are on our par list, it is to your interest to remit at par, and we trust you will advise us accordingly, so that the name of your institution may appear in the next issue, which will be printed shortly. Yours very truly, —— ——, Deputy Governor. LCA/LB.

September 8th, 1919.

Citizens Savings Bank and Trust Company, Jefferson City, Tenn.

GENTLEMEN: On July 11th we wrote you asking your co-operation in bringing about a national par list, by remitting to us at par for items drawn upon your good bank, to which we do not appear have received reply.

143 Since our last letter more than 500 banks, by permitting their names to be added to the Federal Reserve System par list, have joined with the 20,000 other institutions that were already on the par list, in recognizing the par remittance of checks drawn upon them is an essential to complete service that is due to their depositors.

To give the checks of your customers the same standing in the commercial world as the checks drawn on banks that are on our par list, it is to your interest that you agree to remit at par, and we trust you will advise us accordingly, so that the name of your institution may appear in the next issue, which will be printed shortly. Yours very truly, —— ——, Deputy Governor. LCA:G.

Federal Reserve Bank of Atlanta.

November 7th, 1919.

On several occasions we have written you, requesting your co-operation in bringing about a national par list, by agreeing to remit to us at far for items drawn upon you, but so far, you have not indicated your desire to perform this service for your depositors.

There are now 21,882 banks in the United States that are remitting at par, thus giving a service to their depositors to which they are justly entitled. There are 17 States in the United States whose banks (members and non-members of the Federal Reserve System) are all giving this service. In Tennessee, there is a total of 540 banks, of which 276 are giving the same high type service to their depositors. This means that checks drawn on the depositors of 276 banks in Tennessee are more readily acceptable in the chan-
144 nels of commerce and industry than are the checks drawn upon you by your depositors.

We feel sure it is your desire that your customers enjoy the same degree of service as do the depositors of the 276 banks in Tennessee and the 21,882 banks throughout the United States, referred to.

We trust you will give the matter the consideration it deserves and awaiting the favor of your reply, we are, Very truly yours, —— —— Deputy Governor. LCA:D.

NOTE.—Form letter.

November 7th, 1919.

Bluff City Bank, Bluff City, Tenn.

GENTLEMEN: On several occasions we have written you, requesting co-operation in bringing about a national par list, by agreeing to remit to us at par for items drawn upon you, but so far you have not indicated your desire to perform this service for your depositors.

There are now 21,882 banks in the United States that are remitting at par, thus giving a service to their depositors to which they are justly entitled. There are 17 States in the United States whose banks (members and non-members of the Federal Reserve System) are giving this service. In Tennessee there is a total of 540 banks

of which 276 are giving the same high type of service to their depositors. This means that checks drawn by the depositors of 276 banks in Tennessee are more readily acceptable in the channels of commerce and industry than are the checks drawn upon you by your depositors.

145 We feel sure it is your desire that your customers enjoy the same degree of service as do the depositors of the 276 banks in Tennessee, and the 21,882 banks throughout the United States, referred to.

We trust you will give this matter the consideration it deserves, and awaiting the favor of your reply, we are, Very truly yours, ——, Deputy Governor. LCA:D.

Bluff City Bank, Bluff City, Tennessee.

November 20th, 1919.

Mr. L. C. Adelson, D. G., Federal Reserve Bank, Atlanta, Ga.

Sir: In reply to your letter of November 7th in respect to remitting to you at par for items drawn on us, I wish to advise that I will take this matter up with our Directors at our next meeting, which will be in December, and will then advise you concerning the matter. Yours very truly, (Signed) F. L. Lilley, Cashier.

Bank of Goodlettsville.

Goodlettsville, Tenn., Dec. 6, 1919.

Federal Reserve Bank, Atlanta, Ga.; Mr. L. C. Adelson, Deputy Governor:

In September we wrote you that we would remit at par for items drawn on this bank till Jan. 1, 1920, as an experiment. We
146 find that it is a cost to us of several dollars per day, and feel that our customers can afford to pay the small sum of ten cents per one hundred dollars on their checks. Trusting this will meet with your approval and will not inconvenience any one very much as it is quite an item to a small bank. We will charge 10c. per $100 after 12/31/19. Yours very truly, S. H. Wilhoite, Cashier.

Dec. 10, 1919.

Mr. S. H. Wilhoite, Cashier, Bank of Goodlettsville, Goodlettsville, Tenn.

Dear Sir: Receipt is acknowledged of yours of Dec. 6th, advising that after Dec. 31, 1919, you will discontinue handling for us at par items drawn upon your bank. We very much regret this action on your part coming, as it does, when all the Federal Reserve Banks are daily adding to the list of banks remitting at par; their efforts having reached the point where there are only about 5,000 banks of the 30,000 in the United States that are not so remitting. The day is not very far distant when the remaining banks will realize the necessity

of giving this high type of service to their depositors, and we trust, upon further consideration, you will agree to remain on our par list and remit at par for such items as we may send you.

In event you do not feel that you can continue to do so, we will ask that you extend the time that you will remit at par until Jan. 15, 1920. Our par list is printed around the fifth of the month, and it usually takes ten days for its distribution throughout the United States; therefore, we could not bring to the attention of the various banks the removal of your name from this list until that time.

147 We trust, however, that you will see fit to continue remitting at par, and await the favor of your reply. Very truly yours, —— ——, Deputy Governor.

December 20, 1919.

Mr. S. H. Wilhoite, Cashier, Bank of Goodlettsville, Goodlettsville, Tenn.

Dear Sir: On December 10th we wrote you in response to your letter of Dec. 6th, relative to your discontinuing to remit at par and asking that you continue to do so, to which we do not appear to have received reply.

In order that you may visualize the progress that has been made by the various Federal Reserve Banks towards the establishment of a national par list, we enclose a map of the United States, from which you will note that 25 States are entirely par, 10 States nearly par, and only 5,109 banks not remitting at par as of Dec. 1st.

We trust that you have reconsidered your decision, and that you will advise us accordingly.

Awaiting the favor of your reply, we are, Very truly yours, —— ——, Deputy Governor. Encs.

148 Federal Reserve Board, Washington.

December 11, 1919.
x—1752.

Subject: Questions of Law and Policy Involved in Matter of Collecting all Checks at Par.

Dear Sir: In view of complaints which are being made from time to time concerning the policy of Federal Reserve Banks in collecting checks on all points in their respective districts at par, there is enclosed for your information a copy of a letter which was sent to a protesting non-member bank in one of the districts, which defines the questions of law and policy involved. Very truly yours, —— ——, Governor. To Chairmen and Governors of all F. R. Banks.

Federal Reserve Board Washington.

X—1748.

Dear Sir: Receipt is acknowledged of your letter of the —— in which you protest against the policy which has been adopted by the

Federal Reserve Banks with the approval of the Federal Reserve Board in the matter of the collection of checks which are received by Federal Reserve Banks from their member banks or from non-member banks which maintain clearing or collection accounts with them.

The Board's action is based upon its conception of the very evident purposes of the Federal Reserve Act. Section 13 of the
149 Act begins as follows: "Any Federal Reserve Bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national bank notes, Federal Reserve notes, or checks, and drafts, payable upon presentation, and also for collection, maturing notes and bills." Even though the Federal Reserve Board has heretofore ruled that the permissive "may" as used in the foregoing paragraph should not be construed to mean the mandatory "shall," nevertheless it is clear that a Federal Reserve Bank in order to do any business whatever must exercise some of the permissive powers authorized by law. It would be impossible otherwise for a Federal Reserve Bank to afford to its member banks many of the privileges which the law clearly contemplates and to which the member banks are clearly entitled. But independently of a discussion of this phase of the situation, it seems to the Board that doubts upon this question are received upon consideration of the provisions of Section 16. "Every Federal Reserve Bank shall receive on deposit at par from member banks or from Federal Reserve Banks checks and drafts drawn upon any of its depositors." In this case, the obligatory "shall" is used so that there is no option in the Federal Reserve Bank so far as checks and drafts upon its depositors are concerned. From this it may be argued that as the depositors of a Federal Reserve Bank are member banks there is no obligation upon the Federal Reserve Bank to receive on deposit at par checks on non-member banks, but even if the language of Section 13 be construed as permissive there seems to be no question that the Federal Reserve Bank has the right to receive on deposit from any of its member banks any checks or drafts upon whomsoever drawn, provided they are payable upon presentation. The whole purpose of the Act demands that in justice to member banks, they should exercise that right.

Section 16 further provides that the Federal Reserve Board "may at its discretion exercise the functions of a clearing house for
150 such Federal Reserve Banks * * * and may also require each such bank to exercise the functions of a clearing house for its member banks." In accordance with the purpose of this paragraph, the Federal Reserve Board, with the view ultimately of establishing a universal or national system of clearing intersectional balances as well as bank checks and drafts, has established a gold settlement fund through which daily clearing- between all Federal Reserve Banks are consummated and has also required each Federal Reserve Bank to exercise the functions of a clearing house for its member banks. In order, however, to make fully effective its facilities as a clearing house in accordance with the terms of this section, there does not seem to be any doubt that the Federal Reserve Bank

should not only exercise its obligatory power to receive from membe
banks checks and drafts drawn upon other member banks, but th
it should also exercise its permissive power to receive from membe
banks any other checks and drafts upon whomsoever drawn, provide
that they are payable upon presentation.

There are no doubt many non-member banks without sufficien
capitalization to make them eligible for membership in the Feder
Reserve System, but provision is made for such banks in Section 1
by authorizing the Federal Reserve Banks, for purposes of exchan
or of collection, to receive deposits from any non-member bank o
trust company. But for the fact that the small country banks ar
able to have their out of town items credited at par by some city co
respondent, there is no doubt that many more of them would ava
themselves of the non-member collection privilege than have done so

There is a proviso in Section 13 which allows member and non
member banks to make reasonable charges "to be determined and
regulated by the Federal Reserve Board, but in no case to exceed 1
cents per $100 or fraction thereof, based on the total of checks and
drafts presented at any one time, for collection or payment
151 of checks and drafts and remission therefor by exchange o
otherwise; but no such charges shall be made against the Fed
eral Reserve Banks." This has been construed by the Attorney Ge
eral of the United States as meaning that a Federal Reserve Ban
can not legally pay any fee to a member or non-member bank fo
the collection and remittance of a check. It follows, therefore, th
if the Federal Reserve Banks are to give the service required of the
under the provisions of Section 13 they must in cases where banks
refuse to remit for their checks at par use some other means of co
lection no matter how expensive.

The action of the various Federal Reserve Banks in extendin
their par lists has met with the cordial approval of the Federal Re
serve Board, which holds the view that under the terms of existi
law, the Federal Reserve Banks must use every effort to collect
bank checks received from member banks at par. Several of t
Federal Reserve Banks are now able to collect on all points in the
respective districts at par and new additions to the other par lis
are being made every day. The Board sees no objection to one ban
charging another bank or a firm or individual the full amount pr
vided in Section 13 of the Federal Reserve Act (10 cents per $10
and has not undertaken to modify these charges, but the Act ex
pressly provides that no such charge shall be made against the Fe
eral Reserve Banks.

It is the Board's duty to see that the law is administered fairly a
without discrimination and that it applies to all banks alike, and
is making an earnest endeavor to carry out the laws as construed b
the highest legal authority of the administrative branch of the Go
ernment.

NOTE.—This is the same letter as Exhibit "A" to the original ba

Federal Reserve Bank of Atlanta.

DEAR SIR: As you know, the Federal Reserve Bank of Atlanta and its branches have not been handling checks and drafts drawn upon your bank. This was not meant as a reflection, but was due to the fact that you have not signified your willingness to remit at par for your checks, and under the provisions of the Federal Reserve Act, as construed by the Attorney General of the United States, we are not permitted to pay exchange charges for the collection of bank checks and drafts payable upon presentation.

However, the time has now arrived, when, in justice to the 8,955 member banks of the Federal Reserve System, and the non-member banks who maintain clearing accounts with the various Federal Reserve Banks, together with the 16,196 non-member banks who are remitting at par, we must, in compliance with the intent of the Federal Reserve Act, begin receiving on deposit, at par, checks and drafts payable on presentation drawn on any bank in the United States, whether a member of the Federal Reserve System or not. This will include the checks and drafts drawn upon your bank, and the purpose of this letter is to ask that you join the vast army of par remitting banks by advising us it will be agreeable for us to include your name in the next issue of our par list, and that you will remit to us at par for items drawn upon you. While, as stated, the Federal Reserve Act does not permit us to pay exchange for the remittance of bank checks and drafts payable upon presentation, we can incur any cost that is necessary in order to carry out the purposes of the Act, and we would very much regret to be forced to adopt other methods of collection that would prove embarrassing, annoying and expensive to you.

In order that you may not incur expense in remitting to us at par for items drawn upon you, we will—

1. Enclose with each cash letter a stamped envelope for return remittance;

2. Permit you to send us currency, at our expense, in payment of our letters, if you prefer to remit in that form instead of exchange; such currency, if gold, silver, minor coin, or $1 and $2 bills to be sent us by express, charges collect—bills of larger denomination than $2 to be sent us by registered mail, insured, you to deduct the cost of postage and registration, and insure the shipment under our policy, we furnishing you the necessary declaration forms;

3. Permit you to open with us a non-member clearing account, and send to us for credit, at par, items drawn on any of the 25,151 banks in the United States shown in our par list, which list we hope to announce in a short time covers the remaining 5,109 banks, that are not now remitting at par. The items so sent us would be credited by us to an uncollected funds account, and be transferred, when available in accordance with our time schedule, to a collected funds account. The balances shown in the collected funds account would be available to you for use in paying for our cash letters sent you; the only requirement being that a sufficient balance be maintained

in the collected funds account to offset the items that are in transit to you for remittance.

Any excess balances in the collected fund account would be subject to your check as you might desire, or we would make wire transfers for you, charging only the cost of telegrams, or ship you currency at your expense. As a matter of information would say that for our member banks, the cost of telegrams incident to wire transfers and shipments of currency are absorbed by us. So that you may visualize the progress that has been made in the establishment of a national par list, we enclose a map of the United States from which you will note that 24 States and the District of Columbia are entirely par, and ten States are nearly par.

154 Also, in order that you may fully understand the necessity for the efforts of the Federal Reserve Banks towards establishing a national par list, we enclose copy of a letter written to a non-member bank, which defines the questions of law and policy involved.

The fact remains that the Federal Reserve Act is a law passed by majorities in both Houses of Congress, and neither the Federal Reserve Board, nor the Federal Reserve Banks, can do other than follow the mandates thereof.

We wish to point out in this connection that, while we would expect you to remit at par for checks and drafts drawn upon you, you would still be in a position to charge exchange for the collection of bill of lading drafts, maturing notes, and other purely collection items, and it is probable that the profits derived from the handling of these items represent the larger proportion of your exchange earnings.

Also your remitting to us at par would not prohibit you from charging your depositors at time of deposit, at the legal rate of interest to cover the time involved in the collection of out of town items.

We trust you will give the matter the earnest consideration it deserves, and will advise us that you will remit to us at par for checks and drafts drawn upon you.

Awaiting the favor of your reply, for which stamped envelope is enclosed, we remain, Yours very truly, M. B. Wellborn, Governor.

NOTE.—This letter is the same as Exhibit "B" to the bill.

155 Federal Reserve Bank of Atlanta.

December 20th, 1919.

Mr. J. S. Parker, Cashier, Kingston Bank & Trust Company, Kingston, Tenn.

DEAR SIR: We do not appear to have received any response to our letter December 15th, relative to your remitting at par for items drawn upon you, and will be pleased to have you advise us your decision. Very truly yours, (Signed) L. C. Adelson, Deputy Governor. LCA:D.

In sending items to you for collection, do you guarantee us against loss, on acct. of not sending by most direct route, within last time, to payee Bank? Tennessee Courts so require, to avoid liability. Yours, (Signed) J. S. Parker.

December 20th, 1919.

Mr. F. L. Lilley, Cashier, Bluff City Bank, Bluff City, Tenn.

Dear Sir: Under date of November 20th, you advised that you would take up with your directors, at their next meeting in December, the question of remitting to us at par for items drawn upon you, and not having heard from you further, we write to inquire their decision.

In order that you may visualize the progress that has been made by all the Federal Reserve Banks towards the establishment of a national par list, we enclose a map of the United States, which shows that but 5,109 were not remitting at par on December 1st. The total number of banks on our par list as of that date, was 25,151 and you will note from the map that 25 states are entirely par, and 10 nearly par. We are now making an organized effort to induce the remaining non-par banks to agree to remit at par, and trust that your bank will be one of the first to do so.

Awaiting the favor of your reply, we are, very truly yours, ——, Deputy Governor. LCA:D. Encl.

December 23rd, 1919.

Mr. J. S. Parker, Cashier, Kingston Bank & Trust Company, Kingston, Tenn.

Dear Sir: Replying to your memorandum on bottom of our letter December 20th, would state that we have the most direct facilities for collecting cash items. Those drawn on member banks and non-member banks on our par list, located in the Sixth Federal Reserve District, are sent direct to place of payment for remittance. Those items that are payable in other Federal Reserve Districts are sent by us to the Federal Reserve Bank or Branch of the district in which the items are payable, and by them forwarded direct to the place of payment.

If you should agree to remit at par for items drawn upon you, they would be sent to you by our Nashville Branch, and with each cash letter sent you, there would be enclosed a stamped envelope for remittance. If at any time it was more convenient for you to remit in currency for items sent you, you could do so at our expense, provided, if the remittance was made in silver and minor coin, or one and two dollar bills, you would ship by express (charges collect), and if the currency was made up of bills of larger denominations than two dollar bills, that you would send by registered mail, deducting the cost of postage and registration. The shipments by registered mail would be insured under our own policy, and we would furnish you with forms for de-

claring such insurance. Further, if you so desired, you could open with us a non-member clearing account, and send to us for credit at par items drawn on any of the banks listed in our par list. There are now 25,051 banks shown in this list, and we hope within a short time to be able to announce that the remaining 5,109 banks are also remitting at par. The items so sent us would be credited by us to uncollected funds account, and be transferred when available in accordance with our time schedule, to the collected funds account. The balances shown in the collected funds account would be available to you for use in paying for our cash letters sent you; the only requirement being that a sufficient balance be maintained in the collected funds account to offset items that are in transit to you for remittance. Any excess balances in the collected funds account would be subject to your checks as you might desire, or we would make wire transfers for you, charging only the cost of telegrams, or ship you currency at your expense. As a matter of information, would say that for our member banks the cost of telegrams incident to wire transfers and shipments of currency are absorbed by us.

Thanking you in anticipation for a reply, which we hope will be favorable, we are, yours very truly, —— ——, Deputy Governor.
LCA:D.

158 *Explanatory Note.*

On December 24, 1919, and December 26, 1919, 1,050 copies of each of the form letters found in Exhibits A and B to the original bill were sent out by registered mail under one cover by the Federal Reserve Bank of Atlanta to 1,050 non-member banks in the Sixth District. In the letters following, where acknowledgment is made of the receipt of the letters of Dec. 24 or Dec. 26, 1919, the above described letters are referred to.

Bank of Villa Rica, Villa Rica, Ga.

Dec. 27, 1919.

Mr. M. B. Wellborn, Governor, Federal Reserve Bank, Atlanta, Ga.

DEAR SIR: Yours received in reference to our listing our bank under your par list. We will consider this matter, and let you know about same just as soon as possible. Yours very truly, S. O. Fielder, Cashier.

Dec. 31, 1919.

Mr. S. O. Fielder, Cashier, Bank of Villa Rica, Villa Rica, Ga.

DEAR SIR: Receipt is acknowledged of yours December 27th advising that you have taken under consideration the question of remitting at par for items drawn upon you, and we trust you will reach a favorable decision, as we would dislike very much to be compelled to adopt other means of collection, which would prove expensive and annoying to everyone concerned.

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139 Awaiting the favor of your further advices in the premises, we are, yours very truly, —— ——, Deputy Governor. LCA:D.

Bank of Hattiesburg and Trust Company.

Hattiesburg, Miss., December 27, 1919.

Mr. M. B. Wellborn, Governor, Federal Reserve Bank of Atlanta, Atlanta, Georgia.

DEAR SIR: This will acknowledge receipt of your registered letter under date of December the 24th.

This letter of yours will be submitted to our Directors at their next regular meeting, which will be held on January 7th, and you will be advised not later than the 8th as to their decision.

Until I receive instructions from our Board to do so, I will not remit for any items coming to us from the Federal Reserve System without making our usual exchange charge of fifty cents per $1,000.00. This, of course, does not apply to such items as we have been handling for you at par in the past. I refer to items in favor of the Treasurer of the United States, being given in payment of taxes or in payment of premium upon Government Insurance. Yours truly, (Signed) J. O. Rea, Vice-President. JOR/r.

140 December 31st, 1919.

Mr. J. O. Rea, Cashier Bank of Hattiesburg & Trust Co., Hattiesburg, Miss.

DEAR SIR: Receipt is acknowledged of yours of December 27th, advising that our letter of December 24th, with respect to par remittance, will be submitted to your Directors at their next meeting January 7th, and that you will advise us of their decision.

We very much hope that they will decide favorably, as we would regret to find it necessary to adopt other means of collection that would, no doubt, prove expensive and annoying to all concerned.

Awaiting the favor of your further advices in the premises, we are, Yours very truly, —— ——, Deputy Governor. LCA:D.

The Commercial Bank & Trust Co. of Alexandria, La.

Capital, $165,000.00.

Alexandria, La., Dec. 29th, 1919.

Federal Reserve Bank, Atlanta, Ga.

(Attention M. M. Wellborn, Governor.)

GENTLEMEN: Answering your letter of Dec. 24th, addressed to Mr. W. R. Hathorn, Cashier, would advise that we have been re-

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161 mitting to the New Orleans Branch of the Federal Reserve Bank at par for the past year or more and we will continue to do so, but we do not want our name on your par list, as we have an agreement with the local banks which prohibits us from doing this. This prohibition, however, does not apply to what we may want to do so far as checks drawn on ourselves are concerned. We are in accord with the Banks of the State in their endeavor to fight the paring of all checks, for the reason that we know that the small banks in the small towns will not be able to exist without this revenue. So far as we are concerned, we have always taken the position that additional business will justify our paring items on ourselves.

We note the allowance and would be glad to have you furnish us with necessary declaration forms for insuring remittances of registered mail.

So far as carrying a non-member account with you, we would ask that you give us further information along this line, advising us what time must elapse before items are credited in the fund account.

I might say right here, that what has caused most of the dissatisfaction in Louisiana than anything else that I know of is the last three lines of the second paragraph of your letter, dated Dec. 24th, 1919. This is, practically, a threat, and you well know that it is human nature to want to fight whenever a threat is made. I believe that more could have been accomplished by diplomacy for as you well know Congress always has its ears to the ground; that is, the members have, and the banking fraternity still have some influence with the voters. The above is written in all kindness and is written merely as a suggestion.

Thanking you for your letter, I am, Very truly yours, (Signed) J. P. Turregano, Vice-President.

162 December 31st, 1919.

Mr. J. P. Turregano, Vice President, Commercial Bank and Trust Company, Alexandria, La.

DEAR SIR: Receipt is acknowledged of yours December 29th, in response to our recent letter relative to par remittance.

The only items that the New Orleans Branch sent you in the past are those payable to Governmental agencies, and our present request for par remittance contemplates that all items drawn upon you, coming to us in the regular course of business, will be sent to you for par remittance. You state in your letter that you are willing to remit at par for your checks, but do not wish your name put on our par list. In order to receive the checks drawn upon you it is necessary that your name be shown in the list, and as you state that your agreement with your local banks does not apply to your own checks, we trust it will be agreeable for us to include your name in the list. We will, however, await your reply before doing so. When we have received your favorable response we will include the name of your bank in the list referred to and

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when the general run of your items begin coming to us they will be forwarded to you by our New Orleans Branch for remittance to them, and we will also furnish you with the necessary declaration forms for insuring currency shipped to the New Orleans Branch under our policy.

In accordance with your request we enclose a copy of our time schedule which shows the deferment of items when received at the parent bank in Atlanta or its various branches. Inasmuch as your bank is located in the New Orleans zone, your account, if opened, would be with the Branch in that city, and your items would be subject to the time schedule as shown in the schedule relating to that Branch. Should you have items payable in the zones covered by our parent bank or other Branches, you will be privileged, in order to save transit time, to forward such items direct to the respective point.

We note your comment with the respect to your construction of the last three lines of the second paragraph of our recent letter. In reply would state that since the establishment of the Federal Reserve System, we have endeavored by persuasive methods to obtain the agreement of all non-member banks in our district to remit at par. The majority have not seen fit to comply. In the past we have permitted larger national questions to curtail our efforts to obtain voluntary action on the part of non-member banks, but we feel that the time has now come when we are duty bound to carry out the provisions of the Federal Reserve Act as they relate to the handling of items that we may receive on deposit.

Thanking you for the courtesy of your letter and awaiting your further advices, we are, Yours very truly, —— ——, Deputy Governor. LCA:V.

Lamar County Bank, Purvis, Miss.

December 29th, 1919.

Mr. M. B. Wellborn, Governor, Federal Reserve Bank, Atlanta, Ga.

SIR: Yours of December 24th instant, by registered mail, reached me Saturday last. I have carefully noted the threat involved which is now generally recognized as being "the big stick" which the powers that be have decided to use to compel the clearing of checks at par. I can but believe that this coercive measure is not applied with any degree of pleasure by such executives as I am persuaded to believe you to be. The policy of the Government, acting through those who are far removed from conditions as they are in sections remote from the large financial centers may commend itself to the powerful, but it is but another of those steps away from the principals of democracy which tend to the centralization of wealth and power and ultimate in impoverishment of the extremities, cause an unhealthy plethora at the heart and finally bring that collapse of social order which democracy of America was designed to promote.

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On our own initiative, more than three years ago, we put in operation a service charge of one-tenth of one per cent for remitting cash items and since that time have maintained such a charge which does no more than provide the salary of one low salaried girl whose employment is made necessary by the duty and labor involved in the matter of these daily clearings.

We believe our charge is fair and that we are entitled to it. While this is true we are not unmindful of the annoyance and constant vexation that we can, and your letter practically assures us we will be subjected to unless we go to a par basis we have decided to say that with the understanding that we be allowed to remit in New Orleans exchange, as we are at present doing, you may enter us on your par list.

While we are now submitting to the demands which compel this action, if we are to escape the threatened penalties, we beg to say that even under adverse conditions we will not desert our comrades in the service, should there develop a disposition to test the matter of submission, through organized effort, that this bank will cast its lot with its fellow sufferers and avail of its constitutional right to withdraw from the agreement now entered into, of allowing our bank to go to the par list of the Federal Reserve Bank of Atlanta.

Assuring you, Mr. Wellborn, that any line herein that has
165 the caustic element is not meant to be the least personal, I am with assurance of respect and esteem, Yours very truly
(Signed) R. L. Bennett, Cashier.

December 31st, 1919.

Mr. R. L. Bennett, Cashier, Lamar County Bank, Purvis, Miss.

DEAR SIR: Receipt is acknowledged of yours of December 29th, outlining your attitude with respect to par remittance, and advising that you will remit at par for items drawn upon you, provided we accept New Orleans exchange. In reply, you are advised that it will be entirely agreeable for you to remit for items drawn upon you in New Orleans exchange, and we will accordingly include the name of your good bank in the next issue of our par list. When the items begin coming to us, they will be forwarded to you by our New Orleans Branch for remittance in the funds stated.

Permit us to suggest that in order to offset the loss of exchange revenue that you adopt the practice of putting the exchange charge (or interest charge, as it should be more properly called) in the proper place, that is, at the source, and when a customer of your bank deposits with you or cashes a check drawn on an out-of-town bank you would be justified in charging him the legal rate of interest for the time that it takes to collect the check, as you are providing funds to him instantly, and are yourselves out of the use of the money for the transit time. This, of course, can be modified in the case of those depositors who maintain compensating balances with you.

As officers of the Federal Reserve Bank we must carry out the provisions of the Federal Reserve Act, and as the par collec-

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166 tion of checks is one of the provisions of that Act, we will be compelled to adopt means of collection that will no doubt prove expensive and annoying to all concerned in connection with those banks who do not voluntarily agree to remit at par. Very truly yours, —— ——, Deputy Governor. LCA:D.

Soddy Banking Co., Soddy, Tenn.

Dec. 29, 1919.

Mr. M. B. Wellborn, Governor, Federal Reserve Bank, Chattanooga, Tenn.

DEAR SIR: We would not object to remitting at par for checks deposited with your good bank, if the banks who send these items would return us the same courtesy.

A number of our depositors are in Chattanooga, Tennessee, every week, and sometimes want a check cashed, and there is not a bank in that city that will cash a check for one of our depositors without charging from ten to twenty-five cents exchange on checks drawn on our bank, and these same banks will send all items drawn on Soddy Banking Company to you for collection, for which we will remit at par, while they will charge me or my depositors exchange every chance they get. Yours very truly, W. H. Crow, Cashier.

167 Dec. 31, 1919.

Mr. W. H. Crow, Cashier, Soddy Banking Company, Soddy, Tenn.

DEAR SIR: Receipt is acknowledged of yours December 29th, in response to our recent request that you remit at par for items drawn upon you. We note that yuoy uowould be willing to do this, provided other banks would return the courtesy, citing as the point you have in mind, the cashing of checks by your depositors when they are in Chattanooga. In my opinion, the Chattanooga Bank is justified in charging exchange on a check that they cash for one who is not a customer. It is obvious that your depositor would receive the cash immediately, but the Chattanooga bank is not able to collect the check for at least two days, thus being out of the use of the money for that time. They are, therefore, entitled to the legal rate of interest for the time it takes to collect such checks. This is the same principle that should be applied by you when a customer deposits or cashes a check drawn on an out-of-town bank, subject to modification, of course, where the customer in question carries a compensating balance with you.

When a customer draws a check on you in favor of another party, he designates a definite sum to be paid to that party., and, consequently, it is a service that is due the depositor that the bank meet his wishes. On the other hand, if the balance against which the depositor draws his check is made up of uncollected funds, he is the one that should payinterest for the accommodation extended him through the giving of immediate credit for out-oftown items

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We trust that upon further consideration of the matter, you will agree to remit at par, as we would dislike very much to be
168 compelled to adopt other means of collection, which would, no doubt, prove expensive and annoying to you.

Awaiting the favor of your further advices, we are very truly yours, —— —— Deputy Governor. L. C. A.: D.

Bank of Fairhope, Fairhope, Ala.

Dec. 30, 1919.

Mr. M. B. Wellborn, Governor, Federal Reserve Bank, Atlanta, Ga.

DEAR SIR: We have your registered letter of the 24th instant, regarding our remitting to you at par for our checks which may come into your hands, and which you say you are willing to handle after we signify our willingness to comply with your wishes.

The question of exchange is one which will not be settled until it is solved right, and our humble opinion is that it is not being brought to a fair or equable conclusion through the coercive methods which the Federal Reserve Boards are forcing upon both member and non-member banks.

As we see the Act, it was never intended to inflict any such hardship on the small banks, which by virtue of the Act cannot become a member, and neither is it our opinion that the Act ever intended to make a big, money-making proposition out of the Federal Reserve Banks.

We believe that the Act as now being enforced, does very materially interfere with the vested rights of the non-members of this country, and in view of the unprecedented profits of the Federal Reserve Bank, and the unfair distribution of these earnings among the stockholders, we feel that we are justified in declining to
169 subscribe to any plan which will further enhance the earning capacity of the Reserve Bank, especially when it is at the expense of us little fellows as well as your own members.

We would respectfully refer you to Mr. Andrew Pondrom's letter in connection with the Houston Branch. He expresses our sentiment even better than we can, and while we do gladly admit of the stabilizing effect of the Reserve Banks and the great good they are doing, yet we cannot believe that their enforcement of par exchange will be upheld.

The writer has heard several of your Governors express the same sentiment, before they were called to serve with any Reserve Bank, and it is quite likely that they are still of the same opinion.

Very respectfully and humbly submitted by Yours truly, Bank of Fairhope. Wm. McIntosh, Cashier.

Jan. 6, 1920.

Mr. Wm. McIntosh, Cashier, Bank of Fairhope, Fairhope, Ala.

DEAR SIR: Receipt is acknowledged, with thanks, of your letter December 30th, outlining your position with respect to par remittance.

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In his interpretation of Section 13 of the Federal Reserve Act, the Attorney General of the United States, our highest legal authority, has given his opinion that the Act specifically states that no charges shall be made against Federal Reserve Banks for the remission of cash items. The enclosure which accompanied our letter of December 24th outlined the provisions of law by which we, as officers of the Federal Reserve Bank, must be guided in the handling of cash items received for deposit, and, as the intent of the Federal Reserve Act is clear that we shall receive on deposit at par all checks sent us by member banks, or non-member banks maintaining bank clearing accounts, we cannot do other than exert every effort to carry same out, regardless of personal wishes. You are incorrect in assuming that the credit of items at par by us increases our earning capacity, for, as a matter of fact, the maintenance of a clearing department is quite expensive and produces no revenue. However, as stated, the par handling of checks is a function prescribed by the Federal Reserve Act and we must provide facilities, no matter how expensive.

We trust you will further consider the matter, as we would dislike very much to have to adopt means of collection which would prove annoying to yourselves and customers, as well as an item of expense to you in shipping currency to pay your checks, which would be presented at your counter for payment in cash.

As a matter of information, you will no doubt be interested to know that 1,151 non-member banks were added to our par list during the month of December, which leaves only 4,000 banks in the United States that are not remitting at par. Very truly yours, —— ——, Deputy Governor. L. C. A.:D.

The Fort Lauderdale State Bank, Fort Lauderdale, Fla.

Dec. 30, 1919.

Mr. M. B. Wellborn, Governor, Federal Reserve Bank, Atlanta, Ga.

DEAR SIR: We are very sorry to receive yours of the 26th. It sounds very undemocratic, but as your office threatened something of this kind for the past year or two, we are not much surprised to receive this letter, but we still believe in our rights of pay for service rendered, and will continue to charge for this service as long as we can.

We are very sorry such good friends as yourself and Mr. De Saussure are now engaged in trying to force this idea over your country bank friends.

With kindest personal regards, I am Yours very truly, C. J. Turner, Cashier. C. J. J.: J.

P. S.—Please be as reasonable with us as you can. Exchange means much to us, and our charges are not excessive.

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Jan. 6, 1920.

My Dear Mr. Joiner: Replying to your letter of December 30 wherein you refer to Mr. De Saussure and myself as trying to force the plan of par clearings over our country bank friends—I suppose Mr. De Saussure feels as I do, that what we are doing is simply in our line of duty.

I have owned country banks, and having been a country banker myself, of course, I have a kindly feeling to all those en-
172 gaged in country banking business. I did all in my power in a reasonable way, to promote their interest in this matter, but the question has now been settled by Congress, and there is nothing left to do but obey the plain mandates of the law.

The country banker had his hearing before Congress and was backed by a Committee of the American Bankers' Association, and the Hardwick amendment represented the ideas and wishes of the country banker. The whole question was fought out on the floor of Congress, and the country bankers lost—now they must abide by the result.

Trusting that you will take a more favorable view of our position and eventually fall in line with us, I am with kind personal regards, Very truly yours, —— ——, Governor. Mr. C. J. Joiner, Cashier, The Fort Lauderdale State Bank, Fort Lauderdale, Florida.

Merchants and Farmers Bank, Roanoke, Ala.

Dec. 30, 1919.

Mr. M B. Wellborn, Governor, Federal Reserve Bank, Atlanta, Ga.

Dear Sir: I am in receipt of your letter of the 24th, relative to clearing checks at par, and I beg to advise that I have always held the belief that checks should be remitted at par the country over. However, the most checks that we get are on towns closest to us, and these have always cost us about as much to get rid of as we charged exchange on ours.

173 There is no doubt but that the Federal Reserve Bank has done great good to the country, and eventually I hope to see every bank in the country a member of the System.

We are under a written agreement with our neighbor, the Roanoke Banking Company, to remit at certain rates for a period of ten years, and this will not expire for about five years yet.

To get down to real facts, we are ready to remit at par for our checks when we can clear everything at par, as well as have our balances remitted without cost to us.

We get more checks on Lafayette, Ala., Wafley, Ala., Standing Rock, Ala., Wedowee, Ala., Bowdon, Ga., and Roopville, Ga., than any other points, and these are the only items we are unable to handle without cost to us.

There is no doubt but that every check in this country should be remitted at par, and I trust to see this in effect soon. Yours very truly, E. M. Moore, President.

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Dec. 31, 1919.

Mr. E. M. Moore, President, Merchants and Farmers Bank, Roanoke, Ala.

DEAR SIR: Receipt is acknowledged of yours December 30th, in response to our recent request that you remit at par for items drawn upon you, and we are glad to know that you are in accord with the idea that checks should be remitted at par the country over. You state that you are under a written agreement with your neighbor to remit at certain rates, which has five years to run, and later you state that you are ready to remit at par for your checks when you can clear everything at par, as well as have your balances remitted
174 without cost to you, also naming several points that you are now unable to handle without cost.

As stated in our previous letter, we recognize our duty to comply with the provisions of the Federal Reserve Act, and it is our purpose to collect at par items drawn on those banks which are not now so remitting; first giving such banks the opportunity to voluntarily agree to remit at par, and if unsuccessful adopt other means of collection. Therefore, in our opinion, it will not be very long before we will be able to handle everything at par, and, in the meantime, as outlined in our letter of the 24th, you could open with us a non-member bank-clearing account and send to us for credit items drawn on any of the banks shown in our par list. These items would be credited to a deferred account, and, in accordance with our time schedule, transferred to a collected funds account. The balances in the latter account could be used by you in payment of items drawn upon you, and any excess balances would be transferred for you without cost, except when the transfer was made by telegraph, the actual cost of the message would be charged. Our only requirement in connection with such an account would be that you maintain a sufficient balance in the collected funds account to offset the average amount of items that we would send to you, and which are in transit.

Please give the matter further consideration, and advise if you cannot remit at par for items drawn upon you.

When writing you on the 24th, we also addressed a similar letter to the Roanoke Banking Company, to which we have not received reply, and in event they do not answer favorably, it occurs to us that possibly you might be interested in handling also for us at par items drawn upon them. By so doing, you would no doubt be in control of the clearings in your city, besides having information with respect to depositors of your neighbor that is obtainable through the handling of their checks. This, of course, is predicated upon their declining to remit at par. In event we are unable to arrange
175 for this par remittance, we will, much as we dislike to do so, be compelled to adopt other means of collection that would prove expensive and annoying to all concerned.

The Federal Reserve Act was passed by Congress, and the officers of this bank are manifestly duty bound to carry out its provisions.

Awaiting the favor of your reply, we are, Very truly yours,

——, Deputy Governor. LCA:D.

988

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Chaton State Bank, Chaton, Ala.

Dec. 30, 1919.

Hon. M. B. Wellborn, Governor, Federal Reserve Bank of Atlanta, Atlanta, Georgia.

DEAR SIR: We have your letter and other data under date of December 24th, 1919, contents of which have been carefully noted. If we handle your checks at par, then will you be in position to handle an account for us in order that our checks drawn on our bank by our customers in favor of Atlanta merchants, can be cleared at par without any confusion? In other words, can we carry an account with your bank in Atlanta, and arrange matters so that our checks can be cleared in Atlanta without confusion? We have had trouble with the Atlanta Clearing House, and they occasionally make our customers believe that we have turned down their checks. This confusion is of several years duration, and took place between a former cashier and the manager of the Atlanta Clearing House, the merits of which we will not go into.

Thanking you for an early reply, we are. Very truly yours, James N. Granade, President. G:N.

176

Jan. 5, 1920.

Mr. James N. Granade, President, Chaton State Bank, Chaton, Ala.

DEAR SIR: Replying to yours December 30th with reference to your remitting at par for items sent you by us, would state that should you agree to do so, the items will be sent you by our Birmingham Branch, for remittance to it in Birmingham, Mobile, or New York exchange.

As outlined in the beginning of the second page of our letter December 24th, excerpt enclosed), you could open with us a non-member bank clearing account, and send to us, or our Birmingham Branch, for credit cash items drawn on any of the banks listed in our par list, copy of which we would furnish you, together with time schedule showing when items so sent would be available for collected funds credit. You would be permitted to draw on us against balances in the collected funds account in payment of our cash letters, the only requirement being that you maintain sufficient balance in that account to offset items that are in transit to you.

With respect to checks of customers in favor of Atlanta merchants, would state that with your name on our par list, the member banks in Atlanta would no doubt deposit them with us, and we would forward them to our Birmingham Branch, to be sent by them to you for remittance. You may rest assured that there would be no confusion such as you refer to as having been in existence between your former cashier and the manager of the Atlanta Clearing House.

As a matter of information, you will no doubt be interested to know that 1,154 non-member banks were added to our par list in the month of December, which leaves only 4,000 banks in the United States that are not remitting at par.

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We trust, with these facts before you, you will further consider the matter, and advise us that you will remit at par for your items.

Awaiting the favor of your response, we are, Very truly yours, ——, Deputy Governor. LCA:D. Encl.

The First State Bank of Fort Meade.

Fort Meade, Fla., Dec. 29, 1919.

Hon. M. B. Wellborn, Governor, Federal Reserve Bank, Atlanta, Ga.

My Dear Sir: Your letter of the 26th to hand, and you are rightly mistaken in the statement that the Federal Reserve Bank has not been collecting through this bank its items at par.

The First State Bank is a consolidation of the First National and the Bank of Fort Meade, effective since Nov. 3rd, and as a member up to that time the First National collected its items at par. The Bank of Fort Meade officials told the writer that items on it had been collected at par for some time and that a stamped envelope had been furnished for remittances by the Federal Reserve Bank.

Upon consolidation, the rate of 10c per $100.00 was applied against all sending banks, and prevailed until the first Board of Directors' Meeting, when it was decided "to collect for the Federal Reserve Bank at par, for the present, and until this action of the Board shall be rescinded." We have been doing just that, but we have not been furnished a stamped envelope to make our remittances in.

The writer favors the par collection plan, as is well known in Florida banking circles, but is of the opinion that all State banks should be brought to it. This last letter, therefore, is regarded the best thing yet done by the Federal Reserve Bank on the subject. Yours truly (Signed) L. L. Bean, Cashier.

December 31st, 1919.

Mr. L. L. Bean, Cashier, First State Bank, Fort Meade, Fla.

Dear Sir: Receipt is acknowledged of yours December 29th, in response to our recent request that you remit at par for items drawn upon you.

You are correct in that you are now remitting to us at par, but our letter was written upon the assumption that you had agreed to remit at par until January 16th only. We interpret your present letter as indicating that it is your intention to continue remitting at par, and we will accordingly include the name of your good bank in the next issue of our par list, and the items will continue to come to you from our Jacksonville Branch, to be remitted for direct to them. We will again bring to the attention of the Jacksonville Branch that stamped envelope must be enclosed to you with each cash letter, but if it is not received, it will be in order for you to deduct the cost of postage when remitting.

We are very glad to note that you are in favor of par collecti
and assure you that we are bending every effort toward the est
lishment of a par list for the entire Sixth Federal Reserve Distri
and thus contribute to the ultimate establishment of a national p
list.

We trust that your Board of Directors, at its next meeting, w
not find it advisable to rescind their action in permitting y
179 to remit at par for, as stated in our previous letter, the ti
has now come when we must begin full par collection as so
as possible, and where present non-par remitting banks cannot b
prevailed upon to perform that function, we will be compelled, muc
as we dislike it, to adopt other means of collection that would pro
costly and annoying to all concerned.

Thanking you for your courteous response to our letter, we ar
Very truly yours, —— ——, Deputy Governor. LCA:D.

The Barbour County Bank, Louisville, Alabama.

Dec. 31, 1919.

Mr. M. B. Wellborn, Atlanta, Ga.

DEAR SIR: Your letter regarding our remitting at par receive
I do not think that this would be to our advantage to do this as
would require our keeping an account with you and as our capital i
small and at times our deposits run rather low so that would be reall
a hardship on us to open the account with you at this time.
would be glad to get in line with you in this matter, but for reason
as above, think it best not to do so now. Very truly yours, Barbou
County Bank (Signed) J. H. Blair, Cashier.

180

January 6th, 1920.

Mr. J. H. Blair, Cashier, Barbour County Bank, Louisville, Ala.

DEAR SIR: Receipt is acknowledged of yours December 31st, in
response to our recent letter relative to par remittance, and we no
that you do not think it would be to your advantage to do so, as it
would require your keeping an account with us. The suggestion
contained in our previous letter in regard to opening a non-membe
bank clearing account was made with a view of affording you the
benefit of our collection facilities, if you desired to avail yourself
of them, but it is not required that you open such an account.

If you should agree to remit to us at par for items drawn upon
you, you could send us in payment Atlanta or New York exchange
or if more convenient to do so, you could ship us currency at our
expense, as outlined in our recent letter.

To carry out the provisions of the Federal Reserve Act we will be
compelled, if you do not agree to remit at par, to present your items
at your counter for payment in cash, which would no doubt prove
expensive to you, as you would necessarily have to be continually
shipping in currency to meet those demands. This method would
also, no doubt, prove annoying to you and to your customers.

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As a matter of information, you will probably be interested to
ow that 1,154 non-member banks were added to our par list during
e month of December, which leaves only 4,000 banks in the United
ates that are not remitting at par.
Awaiting the favor of your further advices, we are, Very truly
urs, —— ——, Deputy Governor. LCA:D.

January 7th, 1920.

r. S. H. Alexander, President Marion Trust and Banking Com-
pany, Jasper, Tenn.

Dear Sir: Receipt is acknowledged of yours December 31st, ad-
sing that you will remit at par for items drawn upon you. We
ll accordingly include the name of your good bank in the next
ue of our par list, and as soon as the items begin coming to us,
ey will be forwarded to you by our Nashville Branch for remit-
nce to it in Nashville, Chattanooga, or New York exchange, or
en you find it more convenient, by currency, at our expense, in
e manner outlined in our previous letter.
The matter of charging exchange on out-of-town checks cashed
you, or received on deposit, is one of education. The proper
se for exchange charge (or interest charge as it should be prop-
ly called) is at the source, and when a customer who maintains no
mpensating balance desires to receive advances on out-of-town
ecks, he should certainly be made to pay the legal rate of interest
r the time that you are, in effect, discounting the check, which is
me consumed in the process of collection. The farmers are more
lightened now than they were in the past, and we do not believe
at they would discontinue their bank accounts by reason of such
arges being made, for, as a matter of fact, they need the banks
lly as much as the banks need them, and the majority of them
alize the risks they run when they keep money hidden away.
Thanking you for your spirit of co-operation, we are, Very truly
urs, —— ——, Deputy Governor. LCA:D.

Marion County Banking Company, Jasper, Tenn.

12/31/19.

Mr. M. B. Wellborn, Gov. Federal Reserve Bank of Atlanta, At-
lanta, Ga.

Dear Sir: In answer to your letter of December 26th, asking us to
signify our willingness to remit you at par will say, as we see it we
will be compelled to comply to request. While we feel this will be
a great injustice to the country banks from the fact that it will cause
them to lose considerable revenue from exchange.
Speaking for ourselves, it is liable to be a detriment to us to the
amount of from $600 to $700 a year.
In your letter you state that in order for us to obviate this we could
readily charge exchange on foreign checks we cash through the
window. We cannot do this from the fact that our depositors are

made up largely of farmers, and if we should attempt such a thi as this, we believe that many of them would discontinue deposit their checks in our bank.

It has never been a custom here to charge our depositors for c lecting foreign checks, and we believe this would have a tende to very materially affect deposits in country banks, but as we stat in the outset, we see no other remedy but that you should place us your par list. Yours very truly, (Signed) S. H. Alexander.

183 Citizens' Bank, Rogersville, Tenn.

January 1st, 1920.

Mr. M. B. Wellborn, Federal Reserve Bank of Atlanta, Atlanta, G

DEAR SIR: Replying to your circular letter of December 26th regard to listing the Citizens' Bank of Rogersville as a par bank the Federal Reserve Bank of Atlanta, Ga., for the collection of chec drawn against our banks, we have decided to accept the proposition as defined in your letter and to open with you a non-member clea ing account for the period of one year, and if we find that this a rangement is satisfactory of course we will be glad to continue th arrangement indefinitely.

If we understand your proposition, this bank will be permitted t carry a clearing account with you, you to collect all checks on p points without charge to us, and at the expiration of a specified tim say, three to five days, you will credit our account and allow us draw against you in payment of items sent us by you for collectio on this bank—items meaning checks or cash items. If we unde stand it, we are not supposed to collect notes, sight drafts, etc., unde this arrangement except that we make a charge of $1 per thousan for the service of collecting notes, sight drafts and purely collectio items.

We also understand further that we are not to be paid any inter on any realized balance that we maintain with you.

If we are correct in our understanding of the matter you ma kindly send us proper forms to be executed by us and returned t you. We also inquire if you will furnish us blank drafts for th purpose of issuing checks against the Federal Reserve Bank

184 We will be pleased to hear from you at your earliest con venience, and as soon as we receive your reply we will begi to send you items for collection. Very truly yours, (Signed) Thos. P. Summers, Asst. Cashier. TPS:W.

January 7th, 1920.

Mr. Thos. P. Summers, Asst. Cashier, Citizens Bank of Rogersville, Rogersville, Tenn.

DEAR SIR: Receipt is acknowledged of yours January 1st, advising that you will remit at par for items drawn upon you, and that you desire to open a non-member bank clearing account with us.

We will accordingly include the name of your good bank in the next issue of our part list, and as soon as the items begin coming to

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they will be forwarded to you by our Nashville Branch for remittance to it in Nashville exchange.

Your understanding of our method of handling non-member bank clearing accounts is correct, and we enclose copy of our July 1st par list, together with the December supplement, showing all additions and withdrawals. There is now in preparation a complete par list, as of January 1st, which will be forwarded to you as soon as it is from the press. We also enclose copy of our time schedule, showing when items sent us become available in the collected funds account. To save transit time, items payable in the respective zones of the Atlanta Bank and its branches may be sent direct to the parent bank or branch as indicated in the time schedule. All other items should be sent to the Nashville Branch or the parent bank in Atlanta, or if it is your preference, all items that we are able to collect at par can be sent either to the Nashville Branch or the parent bank in Atlanta. Notes, sight drafts, and other purely collection items will not be subject to par remittance, unless it is your preference.

We enclose two signature cards on which we will thank you to furnish us specimen signatures of those authorized to sign in your behalf. We do not furnish blank drafts for the purpose of issuing checks on us, but we are now preparing cash letters for use in sending items to us, or our branches; a supply of which we will be pleased to furnish you.

A letter similar to the one addressed to you on December 26th was also written to the Hawkins County Bank, your city, to which we have not received reply. It occurs to us that, in event they do not agree to remit, you might be interested in handling for us at par items drawn on that bank. This would probably give you control of the clearings in your city, as well as permit you to derive the benefits that accrue through the handling of items drawn upon a competitor bank.

Thanking you for your spirit of co-operation, and awaiting the favor of your further advices, we are, Very truly yours, —— ——, Deputy Governor.

Aliceville Bank and Trust Co., Aliceville, Ala.

Jan. 3, 1920.

Mr. M. B. Wellborn, Governor, Federal Reserve Bank of Atlanta, Atlanta, Ga.

DEAR SIR: We duly received your circular letter of December 26th with which you enclosed copy of a letter from Mr. Harding to some other bank.

Since it seems we are going to have to forfeit our exchange business, I guess there is nothing to do but what we are compelled to—that is, remit you without charge, but I hope that it is possible that we may have some rights as to charges to other people. For instance: if we write you that we will remit for your items without charge and authorize you to carry our name

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on your par list, would our regular New York drafts in settlement of your cash letters be acceptable without us having to carry a deposit with you to take care of the remittances? We are thinking of this way of handling the matter, because it does not strike us that the clearing privilege you offer us would be of any interest to us, as we have just as good arrangements with other banks, or better. The question is, if we merely agree to remit your items without charge and you so *advertise* us, can we not then charge any other bank, or any other person, what we please for exchange?

Kindly write us full about this, and I think that on receipt of your reply, we will be in a position to tell you promptly just what we have decided upon. Yours very truly, J. V. Park, President. JVP/W.

January 6th, 1920.

Mr. J. V. Park, President, Aliceville Bank & Trust Company, Aliceville, Alabama.

DEAR SIR: Replying to yours January 3rd, would state that should you agree to remit at par for items drawn upon you, such items would be sent to you by our Birmingham Branch for remittance to it, and your exchange on Birmingham or New York would be entirely acceptable. It will not be necessary for you to
187 carry a deposit with us, and the suggestion contained in our recent letter was made with a view of permitting you to take advantage of our collection facilities, if you desired to do so.

Your agreement to remit to us at par would not in any way prohibit you from charging exchange for the remittance of items coming to you from other sources, if it was your desire to do so.

We trust with this information before you, you will find it advisable to agree to remit at par for items sent to you by us, through our Birmingham Branch. We believe you will be interested in knowing that 1,154 non-member banks were added to our par list during the month of December, which leaves only 4,000 banks in the United States that are not now remitting at par.

A letter similar to the one sent you was also addressed to the Merchants & Farmers Bank of your city, on December 24th, to which we have not received reply. It occurs to us that in event they do not make a favorable response, you might be interested in handling for us at par items drawn upon that bank. By doing so, you would most likely obtain the control of the local clearings, in addition to the benefits that accrue by reason of seeing the checks of the depositors of a competitor bank. In event your neighbor does not agree to remit at par, and you also do not wish to handle the items for us, we will, of course, have to adopt other means of collecting the checks, much as we would dislike to do so, as it would no doubt prove annoying to all concerned.

Awaiting the favor of your further advice in the matter, we are, Very truly yours, —— ——, Deputy Governor. LCA:D.

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188 Bank of Vonore, Vonore, Tenn.

Dec. 29, 1919.

Federal Reserve Bank, Atlanta, Ga.

GENTLEMEN: In reply to yours of the 26th relative to remitting you at par for checks drawn on us. We have decided to try your plan and see how the thing works in actual practice. We reserve the right to terminate this par relation at any time we desire to do so by giving you thirty days' notice. We will either remit you Chattanooga or New York Exchange as suits us at the time of making the remittance.

We notice that you mention checks and drafts. We will remit for checks and drafts on us as above stated but will not remit at par for drafts drawn on any of our customers and sent us for collection and remittance, as those almost always incur extra expense and trouble. Yours truly, R. D. Coltharp, Cashier.

January 7th, 1920.

Mr. R. D. Coltharp, Cashier, Bank of Vonore, Vonore, Tenn.

DEAR SIR: Receipt is acknowledged of yours December 29th, advising that you will remit at par for items drawn upon you, provided Chattanooga or New York exchange will be satisfactory to us. This will be entirely agreeable, and we will accordingly include the name of your good bank in the next issue of our par list, and as soon as the items begin coming to us, they will be forwarded to you by our Nashville Branch for remittance to it.

189 Maturing notes, sight drafts and other purely collection items sent you by us would not be subject to par remittance, unless it was your preference.

Thanking you for your spirit of co-operation, we are, Very truly yours, —— ——, Deputy Governor. LCA—D.

Watkins Banking Company, Faunsdale, Alabama.

January 6th, 1920.

Mr. M. B. Wellborn, Governor, Federal Reserve Bank, Atlanta, Ga.

DEAR SIR: Your letter of Dec. 24th, asking us to agree to remit you at par for checks on us, was duly received, but due to the unusual amount of clerical work incident to the close of the year we were unable to reply sooner.

We have decided to do as you request and remit you at par for all your checks on us altho it will mean a very considerable reduction in our income. However, as you say that only one bank out of every six in the entire United States now charges exchange, we feel that the time has arrived for us to join in the movement to make the whole nation par.

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We note the facilities you offer us for remitting and ask that y
please send us a copy of your last par list and put us on your ma
ing list for future issues. We will not open a checking accou
with you right now, but would like to keep posted as to par rem
ting banks. Yours very truly, Watkins Banking Company. Si
dons Stollenwerck, Cashier.

190 , January 7, 1920.

My Dear Mr. Stollenwerck: I take great pleasure in ackno
edging your letter of January 6, and wish to say that we appreci
very much your willingness to join hands with us in putting in
effect the par clearing system.

I regret that many of the State banks, not members of the Fe
eral Reserve System, are taking the stand against us in this cam
paign that we are inaugurating.

The Federal Reserve System had done so much for our whe
Country, including the State banks as well, I think they shou
now recognize this fact and do something toward the developme
of the System.

I am enclosing herewith a copy of our most recent par list, an
have instructed our Transit Department to place the name of yo
bank thereon, as requested by you.

Should you at any time have occasion to visit Atlanta, we wou
very much appreciate a call from you. Very truly yours, —
——, Governor. Mr. Siddons Stollenwerck, Cashier, Watki
Banking Company, Faunsdale, Alabama. Enclos.

Bank of Hattiesburg and Trust Company.

Hattiesburg, Miss., January 8th, 1920.

Mr. M. B. Wellborn, Gov., Federal Reserve Bank, Atlanta, G

Dear Sir: At a Meeting of our Board of Directors held on yest
day, I was instructed to advise you that beginning imme
191 ately we will remit you for cash items drawn on this i
stitution at par but we reserve the right to terminate th
agreement at any time without notice to you.

For your own information, I might add further that we ha
Meeting of our Stockholders on yesterday. The question of
increasing our capital to $100.000.00 and joining the Federal R
serve System was seriously discussed; in fact, this question w
mentioned in our call to our Stockholders and it was one of the fo
most questions before this Meeting. The Stockholders took the a
tude that in view of your recent activities it would be best for
to remain out of the System and voted accordingly. Yours tru
(Signed) J. O. Rea, Vice-President. JOR/r.

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Bank of Hattiesburg and Trust Company.

Hattiesburg, Miss., January 8, 1920.

Mr. M. B. Wellborn, Governor, Federal Reserve Bank, Atlanta, Georgia.

DEAR SIR: I have your telegram under date of January the 7th making a request that we purchase Treasury Certificates of Indebtedness.

I rather feel that in soliciting the State Banks who are not members of the Federal Reserve System you are evidencing monumental nerve. How the Federal Reserve Bank can consistently request non-member institutions to invest their funds at a 4½% rate when commercial paper rates are 6% and better is beyond me, in view of the fact that non-member banks are prevented from discounting their paper with the Federal Reserve Banks using these Treasury Certificates of Indebtedness as collateral. Yours very truly, (Signed) J. O. Rea, Vice-President. JOR/r.

January 10th, 1920.

Mr. J. O. Rea, Vice-President, Bank of Hattiesburg & Trust Co., Hattiesburg, Miss.

DEAR SIR: Receipt is acknowledged, with thanks, of your letter January 8th, advising that at the last meeting of your Board of Directors, it was agreed that your bank would remit to us at par for items drawn upon it. We will accordingly include your name in the next issue of our par list, and as soon as the items begin coming to us, they will be forwarded to you by our New Orleans Branch, for remittance to it in New Orleans, Chicago or New York exchange, or when more convenient, in currency at our expense, shipped in the manner outlined in our letter of December 24th.

The New Orleans Branch will, upon request, furnish you with forms for declaring insurance under our policy on shipments sent by registered mail. Very truly yours, —— ——, Deputy Governor. WA:D.

January 10, 1920.

DEAR SIR: I have your letter of January 8, referring to my telegram requesting that you purchase United States Certificates of Indebtedness. I note that you say that this effort on my part requires "monumental nerve." In this connection, I do not agree with you, because it does not require any nerve at all—I am simply performing the duties of my office as Governor of the Federal Reserve Bank of Atlanta.

I regard it that your bank and your officers have as much interest in the affairs of the United States as any member bank, and the request I made of you was simply one to help our Government to finance itself for debts incurred during the world war. I may say that I should think you and your bank would be particularly inter-

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ested in this, and would do all that is possible to accomplish t
result, since the Government favored your city with a milit
camp, which no doubt added a great deal to the wealth of y
community, in which, I dare say, your bank enjoyed its portion
the fullest extent.

While it is true, our bank is not allowed to discount paper f
non-member banks, even though secured by Government obli
tions, you must be aware of the fact that you have the same pri
lege of becoming a member of the Federal Reserve Bank as that
a National Bank, and you could enjoy this privilege if you wis
to do so. I assume it is merely a matter of choice that you
remaining out of the System. Very truly yours. —— ——, G
ernor. Mr. J. O. Rea, V.-President, Bank of Hattiesburg & Tr
Co., Hattiesburg, Miss.

194 Bank of Hattiesburg and Trust Company.

Hattiesburg, Miss., January 12th, 1920

Mr. M. B. Wellborn, Governor, Federal Reserve Bank, Atlanta, G

DEAR SIR: Replying to your letter of the 10th.

There is no desire on my part to prolong correspondence u
a subject on which we both have very decided views but I do w
to call your attention to several facts which were apparently o
looked in your letter.

You are absolutely right that this Bank and our officers have
much interest in the affairs of the United States as anyone; in t
I will not allow my interest in the affairs of this country to be q
tioned by anyone. We are more than willing to aid the Gov
ment in its financing; providing, the Government does its p
and I do not think it is doing its part when it refuses to allow
Bank whether eligible for membership in the Federal Rese
System or not to rediscount paper with the Federal Reserve Sys
when it is secured by Government obligations.

This institution, by reason of its capital, is not eligible for m
bership in the Federal Reserve System. We are now carrying
the neighborhood of a million dollars of commercial paper. A c
siderable portion of these funds would be invested in Treasury C
tificates of Indebtedness if we had the assurance that should
need arise, we could rediscount them with the Federal Reserve B
of this District and until we have this assurance we will not in
one dollar in these Certificates. further I do not think that the G
ernment should call upon the Banks to contribute money tow
financing its affairs at a rate of 4½% when the ruling rate
commercial paper at the present time is 6%. There is
195 doubt but what Government securities should bear a lo
rate than ordinary commercial paper but there should
be so great a discrepancy at 1½%.

The Government favored this city with a Military Camp
true, but so far as the interests of this Bank were concerned,
would have been far better off if the Camp had been a thous

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les away from us; the extra work and large items of expense that were forced to incur by reason of this Camp were not offset by y perceptible increase in our earnings. Yours truly, (Signed) O. Rea, Vice-President. JOR/r.

January 14, 1920.

DEAR SIR: I have your letter of January 12th, and note your reks in reply to my former letter of January 10.

I am perfectly satisfied that you are as much interested in the irs of the United States as anyone, and as a State Bank you are as loyal and patriotic as any National Bank. We feel that all the banks should rally around the flag and help us to finance the ernment whether or not they are members of the Federal Reserve stem. And for this reason we called on the State Banks when the asury Department requested us to sell for them an issue of the ted States Treasury Certificates of Indebtedness.

I note you state your bank is not eligible for membership in the eral Reserve System by reason of your lack of capital—why not rease your capital, and come in with us? I am sure that you ld be pleased with the benefits you would receive as a member of System, and doubtless it would in a way tend to increase the busiess of your splendid institution. State Banks who have joined our System find a very comfortable feeling in being able to rely upon the Federal Reserve System, and also they e found it to be quite profitable for them. Very truly yours, ——, Governor. Mr. J. O. Rea, Vice-President, Bank of Hatsburg & Trust Co., Hattiesburg, Miss.

Bank of Hattiesburg and Trust Company.

Hattiesburg, Miss., January 20th, 1920.

M. B. Wellborn, Governor, Federal Reserve Bank, Atlanta, Ga.

DEAR SIR: I have your letter of the 14th,

You have evidently overlooked my letter to you under date of nuary the 8th in which I stated that the matter of this institution reasing its capital and joining the Federal Reserve Bank was subted to our stockholders at their annual meeting on January the

In view of the pernicious activities of the Federal Reserve Board h reference to the parring of checks, their attitude regarding disnting of paper for State Banks secured by obligations of the ted States Government, our stockholders deemed it best not to the Federal Reserve System.

Another significant fact I would desire to call to your attention that out of the many State Banks that are members of your Sys-. I have never yet discussed the matter of our joining with the rals of any of these member State Banks who have signified that they were satisfied with the treatment which they were receiving and who advised me to enter the System. This with one exception. Yours truly, (Signed) J. O. Rea, Vice-Presi-. JOR/r.

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January 22, 1920.

Mr. J. O. Rea, Vice-President, Bank of Hattiesburg & Trust Company, Hattiesburg, Miss.

DEAR SIR: In the absence of Governor Wellborn, I acknowledge receipt of yours of January 20th.

Your letter of January 8th in which you stated that the matter of your institution increasing its capital and joining the Federal Reserve Bank had been unfavorably considered by your Board of Directors was duly noted, but in view of the fact that it was coupled with the matter of par remittance, we felt that it perhaps be better not to reply to it as we do not for a moment wish it understood that our efforts towards the establishment of a national par list is a coercive measure in influencing membership. We also assumed that your Board of Directors had thoroughly gone into the advantages that would inure through membership, and did not deem them sufficient to warrant your bank in making application.

The activities of the Federal Reserve Board and the Federal Reserve Banks with reference to par clearance are not based upon personal desires or ambitions, but arise from a desire to properly administer the provisions and intent of the Federal Reserve Act which was passed by a wide majority of the Congress of the United States, which is the spokesman for the people. That the Federal Reserve Banks could not discount for non-member banks their paper secured by obligations of the United States Government is not the fault of the Federal Reserve Board, as the act does not permit same to be done. However, in order to assist the non-member banks carrying such securities, and at the same time comply with the law, the Board authorized the Federal Reserve Banks to rediscount, upon the endorsement of a member bank, the paper of non-member banks secured by Government obligations.

198

Your statement that the officials of state bank members, excepting one, with whom you have discussed the matter, having stated that they are not satisfied with the treatment which they are receiving as members of the System, comes very much as a surprise, and we respectfully call your attention to pages 18-21, inclusive, in the pamphlet enclosed herein. Time and again officials of state bank members have stated to the writer and other officers of this bank that they are entirely satisfied with their membership and would not do without it.

Besides the material advantages that are gained through membership in the System, there is the outstanding and most important advantage—that of having a large financial reservoir to turn to when emergencies arise. Very truly yours, —— ——, Deputy Governor.

LCA:D. Encl.

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Farmers' Bank, Iron City, Tenn.

1/12/20.

Mr. M. B. Wellborn, Governor, Federal Reserve Bank of Atlanta, Atlanta, Ga.

DEAR SIR: In answer to your registered letter of December 26th ast., we have paid all checks and drafts at par sent us for collection y Federal Reserve Banks and their Branch banks, and will continue o do so as heretofore. As to joining the par list, we cannot afford o do this yet, but hope to be in position in the near future to join he par remitting banks. Yours very truly, D. P. Hollis, Cashier.

Jan. 10, 1920.

Mr. D. P. Hollis, Cashier, Farmers' Bank, Iron City, Tenn.

DEAR SIR: Receipt is acknowledged of yours January 8th, in esponse to our recent request that you remit at par for items drawn on you.

The checks and drafts heretofore sent you were those payable o Governmental Agencies, but it is now our purpose to receive the ems from all sources. The memoranda which accompanied our ecent letter outlined why it was necessary that we begin the par llection of all checks deposited by our member banks or non-mem- er banks maintaining clearing accounts, and we as officers of a ederal Reserve Bank, must exert every effort to comply with the provisions of the act, regardless of our personal wishes.

As a matter of information, would state that 1,154 banks were added to the Federal Reserve par list during the month f December, leaving only about 4,000 that are not now remitting t par.

We trust you will give the matter further consideration, as we ould dislike very much to cause you the annoyance that would be ecurred should we find it necessary to arbitrarily place your name n our par list, and arrange to present your items for payment in ash.

Awaiting the favor of your further advice, we are, Yours very ruly, —— ——, Deputy Governor. LCA:V.

Union Bank, Clinton, Tenn.

Jan. 12, 1920.

Mr. L. C. Adleson, Deputy Governor, Federal Reserve Bank, Atlanta, Ga.

DEAR SIR: Replying to yours of the 7th, will say that our Board f Directors are still at a loss as to just what to do, and before they ake up their decision they would like to have a little more in- ormation.

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if we agree to remit at par, what kind of exchange will you accept? We have arrangements that we think are more advantageous to us as to our collections than your manner of handling collections would be to us; still, we are at a loss as to whether you will demand of us to remit in New York or Atlanta exchange, or whether you will accept Knoxville exchange for our checks sent direct to us. We get
201 interest on our daily balances, and we should not like to deposit our money where we would not get interest, and besides we get credit the day the checks are received, and that is quite a little item in our favor.

Awaiting your reply as to the above inquiries, we are, Yours very truly, W. W. Underwood, Cashier.

Jan. 14, 1920.

Mr. W. W. Underwood, Cashier, Union Bank, Clinton, Tenn.

DEAR SIR: Replying to yours January 12th, would state that our suggestion with reference to opening a non-member bank clearing account was merely to afford you the benefit of our collection facilities, if you desired to avail yourselves of them. Your remitting at par would not make it necessary that you open such an account.

Answering your specific inquiry with respect to what exchange would be agreeable, should you agree to remit at par, would state that the items would be sent you by our Nashville Branch for remittance to it in Nashville, Knoxville, or New York exchange, or when more convenient, in currency at our expense, to be shipped in the manner outlined in our original letter. Our Nashville Branch will furnish you, upon request, with the necessary forms for declaring insurance on shipments by registered mail.

We trust with this information before you, you will agree to remit at par, and so advise us, in order that we may avoid the necessity of adopting other methods of collection.

Would you care to handle for us at par items on the Peoples Bank of your city? Very truly yours, —— ——, Deputy Governor. LCA:D.

202 The Banking and Trust Co., Jonesboro, Tenn.

Jan. 12, 1920.

Mr. M. B. Wellborn, Governor, Atlanta, Ga.

DEAR SIR: Yours of December 26th was received in due time, but illness has kept me away from my desk. In regard to taking checks at par, and opening our account, would say that we have our correspondents so distributed that nearly all our items come to us without exchange, so I doubt that but few would come through Federal Reserve Banks, so would hardly be justice to us to open exchange deposit. Yours truly, J. M. Fink, Cashier.

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Jan. 14, 1920.

Mr. J. M. Fink, Cashier the Banking & Trust Co., Jonesboro, Tenn.

DEAR SIR: Replying to yours January 12th, which is in response to our recent request that you remit at par, will state that you have probably misinterpreted our letter in that it would be necessary for you to open an account with us. The suggestion made in our letter with respect to such an account was merely to afford you the benefit of our collection facilities, if you desired to avail yourself of them, and your remitting at par would not make it necessary that you open an account with us.

We note you state that nearly all of your items come direct to you and are remitted without exchange, and therefore but few would come through us. This being the case, we see no reason why you should not also agree to remit to us at par, particularly since you now understand that it is not necessary to open an exchange account with us. Should you agree to remit at par, the items would be sent you through our Nashville Branch for remittance to it in Nashville, Chattanooga, Knoxville, or New York exchange, or when more convenient, in currency at our expense. Our Nashville Branch would furnish you with the necessary forms for declaring insurance on shipments sent by registered mail. We hope that you will at once advise us that you will remit at par, and thus avoid our having to adopt other means of collection. Very truly yours, —— ——, Deputy Governor. LCA:D.

Citronelle State Bank, Citronelle, Ala.

Jan. 15, 1920.

Federal Reserve Bank of Atlanta.

GENTLEMEN: You evidently misunderstood our letter in reply to yours of Dec. 24, 1919, concerning par remittances. We told you we were willing to remit at par to you as we had been doing, meaning Government checks or checks given to satisfy Government obligations, not all checks. We are remitting to your New Orleans Branch today at par, but are not willing to do so generally. We are only a small institution, and one of our sources of income is exchange, so you will please advise other banks that we are not on the par list. Yours very truly, John A. Hurt, President.

Jan. 16, 1920.

Mr. John A. Hurt, President, Citronelle State Bank, Citronelle, Ala.

DEAR SIR: Receipt is acknowledged of yours January 15th, in which you state that your recent agreement to remit at par did not contemplate that you would do so for the general run of items. As your letter of January 1st made no qualifications, we assumed that you would remit for all items, and accordingly included the name of your bank in our par list, since which time we have been receiving

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items drawn upon you that have been sent you by our New Orleans Branch for remittance. It is now impossible to remove your name from that list, and if you will not continue to remit at par, we will, of course, have to adopt other means of collection. We would prefer, however, that you have the opportunity of remitting at par, and before adopting other methods, will be pleased to hear from you further. Very truly yours, —— ——, Deputy Governor. LCA:D

Farmers and Merchants State Bank, Ocean Springs, Miss.

January 15, 1920.

Federal Reserve Bank, Atlanta, Ga.

DEAR SIRS: In connection with your letter of December 24, 1919, relative to remitting at par for checks drawn upon this bank and handled thru the Federal Reserve Bank, you are advised
205 that we will receive from you checks drawn upon this bank and remit for same at par, as requested in your letter. Very truly, Farmers & Merchants State Bank. (Signed) C. N. Pooley, Cashier.

January 17th, 1920.

Mr. C. N. Pooley, Cashier Farmers & Merchants State Bank, Ocean Springs, Miss.

DEAR SIR: Receipt is acknowledged of yours January 15th, advising that you will remit to us at par for items drawn upon you. We will accordingly include the name of your good bank in the next issue of our par list, and as soon as the items begin coming to us they will be forwarded to you by our New Orleans Branch for remittance to it in New Orleans or New York exchange, or, when more convenient, in currency at our expense, to be shipped as outlined in our letter of December 24th. The New Orleans Branch will be pleased to furnish you, upon request, with necessary forms for declaring insurance on shipments by registered mail.

A letter similar to the one addressed to you on December 24th was also sent to the Ocean Springs State Bank, of your city, to which we have not received reply. It occurs to us that in event they do not agree to remit at par, you would be interested in handling for us at par items drawn upon them. This would probably give you control of the clearings of your city, as well as the benefit of the information that may be derived through the handilng of checks drawn upon a competitor bank. Of course if they do not
206 agree to remit at par, and you also do not handle the items, we will have to adopt other means of collection.

Thanking you for your spirit of co-operation, we are, Very truly yours, —— ——, Deputy Governor. LCA/D.

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Farmers & Merchants Bank, Tennille, Ga.

Jan. 21, 1920.

Federal Reserve Bank, Atlanta, Ga.

GENTLEMEN: We are now in line and ask that you do not send anything more by express on us and will handle anything on Tennille at par that you may send us. Very truly, C. J. Sessions, Cashier.

January 22, 1920.

Mr. C. J. Sessions, Cashier Farmers & Merchants Bank, Tennille, Georgia.

DEAR SIR: Receipt is acknowledged of yours January 21st, requesting that we do not collect your items by express, and stating that you will now handle Tennille items at par. We have accordingly instructed our transit department to resume sending your items to you for par remittance, and will thank you to reimburse us $1.57 covering the exchange charged by you on various letters
207 since you agreed to remit at par some time ago.

Your letter states that you will handle anything on Tennille at par. Does this contemplate that you will handle for us at par items on the other banks in your city? If so, please advise and we will be pleased to forward them to you. Very truly yours, ——, Deputy Governor. LCA—D.

Bank of Dade City.

Deposits Insured.

Dade City, Fla., Jan. 22nd, 1920.

Federal Reserve Bank of Atlanta, Ga.

GENTLEMEN: We wish to advise that we will remit for all items drawn on Dade City, Fla., at par provided you furnish us with stamped envelope for return remittance. Yours very truly (S.) T. C. Beavers, Cashier.

January 24, 1920.

Mr. T. C. Beavers, Cashier Bank of Dade City, Dade City, Florida.

DEAR SIR: Receipt is acknowledged of yours January 22nd, advising that you will remit at par for items drawn upon you, provided stamped envelope is sent you for return remittance. We will accordingly include the name of your good bank in the next issue of our par list, and as soon as the items begin coming to us, they
208 will be forwarded to you by our Jacksonville Branch for remittance to it in Jacksonville or New York exchange, or, when more convenient, in currency at our expense.

The Jacksonville Branch will enclose stamped envelope with each

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cash letter, and will also, upon request, furnish you with the necessary forms for declaring insurance on shipments by registered mail.

Your letter states that you will remit for all items on Dade City, Florida, and we assume that this means you will handle for us at par items on the Bank of Pasco County, your city. If this is the case, please advise us and we will include the name of that bank in our par list, and the Jacksonville Branch will also send their items to you. This will probably give you control of the clearings on your city, as well as information that is obtainable through the handling of checks drawn on a competitor bank.

Thanking you for your courtesy, and awaiting the favor of your reply, we are, Very truly yours, —— ——, Deputy Governor.
LCA:D.

Federal Reserve Bank of Atlanta.

January 30, 1920.

High Springs Bank, High Springs, Fla.

GENTLEMEN: We are sending you herewith, for remittance at par, our regular cash letter containing checks and drafts drawn on your bank, and will hereafter, as your items come to us in regular course, forward them direct to you for par remittance.

209 Section 13 of the Federal Reserve Act provides that any Federal Reserve Bank may receive from any of its member banks, non-member banks maintaining clearing accounts, other Federal Reserve Banks, and the United States, deposits of checks and drafts payable upon presentation, and with respect to exchange charges, makes the following reference:

"That nothing in this or any other section of this act shall be construed as prohibiting a member or non-member bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts and remission therefor, by exchange or otherwise, but no such charges shall be made against the Federal Reserve Banks."

The Attorney General of the United States, to whom the matter was submitted for opinion, has stated that the clear intent of the paragraph quoted is that no charges for exchange for the remission of checks and drafts, payable upon presentation, shall be made against a Federal Reserve Bank.

We are, therefore, not permitted to pay exchange for the remission of the letter sent you herein, and if you cannot see your way clear to remit in exchange at par (envelope enclosed), or send us currency at our expense, in payment, we would ask that you kindly return the items to us at once, so that we may arrange for their presentation at your counter by an authorized agent, for payment in cash.

We hope for your favorable action, as we would very much regret to be compelled to adopt other methods of collection. Yours very truly, —— ——, Manager, Branch.

NOTE.—Form letter.

210 Federal Reserve Bank of Atlanta.

February 7, 1920.

High Springs Bank, High Springs, Fla.

GENTLEMEN: You kindly remitted for our two cash letters of the 30th and 31st. On one you charged ten cents exchange and the other fifty cents.

In view of the fact that we are not legally permitted to pay exchange, as outlined in our special letter which accompanied these items, may I not ask that you refund us this amount.

Your courtesy in this matter will be greatly appreciated. Yours very truly, —— ——, Manager, Branch. GRD.MS.

Federal Reserve Bank of Atlanta.

February 9, 1920.

High Springs Bank, High Springs, Florida.

GENTLEMEN: You kindly remitted for our cash letter of February 4th, but charged us thirty-seven cents exchange.

As we are not legally permitted to pay exchange, as outlined in our special letter which accompanied this item, we would respectfully ask that you refund the amount charged by you to us, and greatly oblige, Yours very truly, —— ——, Manager, Branch. GRD:MS.

211 Federal Reserve Bank of Atlanta.

High Springs Bank, High Springs, Florida.

February 11th, 1920.

Federal Reserve Bank, Jacksonville, Fla., Branch.

GENTLEMEN: Replying to your letter of the 10th. We are remitting for your letter of $543.58 less 1/10 of 1% exchange. We are willing to make remittances for items on us at this rate, giving you exchange on Jacksonville Fla.

We are not willing to clear at par and it is not our intention to do so until such time as par remittances are made by all banks in Florida, which will call for a general readjustment of country banking. The only remuneration that we receive on certain of the business that we handle is the small exchange, that we get. And our customers know this as well as we do, and they stand with us on the matter. Yours very truly, (Signed) G. W. McCall, Cashier.

212 Federal Reserve Bank of Atlanta.

Jacksonville Branch, Federal Reserve Bank of Atlanta.

January 31, 1920.

Quincy State Bank, Quincy, Florida.

GENTLEMEN: We are sending you herewith, for remittance at par, our regular cash letter containing checks and drafts drawn on your bank, and will hereafter, as your items come to us in regular course, forward them direct to you for par remittance.

Section 13 of the Federal Reserve Act provides that any Federal Reserve Bank, may receive from any of its member banks, non-member banks maintaining clearing accounts, other Federal Reserve Banks, and the United States, deposits of checks and drafts payable upon presentation, and with respect to exchange charges, makes the following reference:

"That nothing in this or any other section of this act shall be construed as prohibiting a member or non-member bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal Reserve Banks."

The Attorney General of the United States, to whom the matter was submitted for opinion, has stated that the clear intent of the paragraph quoted is that no charges for exchange for the remission of checks and drafts, payable upon presentation, shall be
213 made against a Federal Reserve Bank.

We are, therefore, not permitted to pay exchange for the remission of the letter sent you herein, and if you cannot see your way clear to remit in exchange at par (envelope enclosed), or send us currency at our expense, in payment, we would ask that you kindly return the items to us at once, so that we may arrange for their presentation at your counter by an authorized agent, for payment in cash.

We hope for your favorite action, as we would very much regret to be compelled to adopt other methods of collection. Yours very truly, —— ——, Manager Branch.

NOTE.—Form letter.

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Federal Reserve Bank of Atlanta.

Quincy State Bank, Quincy, Florida.

February 5, 1920.

Federal Reserve Bank, Jacksonville, Florida.

GENTLEMEN: We are returning herein three letters with checks on this bank, which you sent us for collection as we cannot remit for same at par. Yours truly, (Signed) N. B. Jordan, Cashier.

214 Federal Reserve Bank of Atlanta.

First National Bank, Quincy, Florida.

February 13, 1920.

Mr. G. R. De Saussure, Manager Federal Reserve Bank, Jacksonville, Florida.

DEAR MR. DE SAUSSURE: Some months ago during a time when the Quincy State Bank of this city were handling your cash letters at par, you advised us that they had decided to sever this arrangement about 15 days before you issued a new par list and invited us to make you a rate for handling items on them during this interval.

We understand that quite recently the local express office are handling these items. As we have heard it, the local office ships the money to you and that a special representative of the Express Company comes here at intervals to collect for the checks.

We presume the present arrangement is of considerable expense and in view of this if we can be of service on the basis of one-tenth of one per cent, the same rate we made in the instance above recited, we will be glad to have you divert your items on the Quincy State Bank to this bank.

With kind regards, we are, Yours very truly, (Signed) J. C. Scarborough, Cashier.

215 Federal Reserve Bank of Atlanta.

February 17, 1920.

Mr. J. C. Scarborough, Cashier First National Bank, Quincy, Fla.

DEAR SIR: Receipt is acknowledged of yours February 13th, advising that you would handle for us items on the Quincy State Bank at one-tenth of one per cent. We regret that we are unable to make this arrangement for the reason that under the Federal Reserve Act we are not permitted to pay exchange for the collection of cash items. Very truly yours, —— ——, Deputy Governor. L. C. A. D.

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The Holmes County Bank, Bonifay, Florida.

Feb. 5, 1920.

Mr. Geo. R. De Saussure, Manager Federal Reserve Bank, Jacksonville, Fla.

DEAR SIR: We are remitting to you at par item sent us yesterday but you need not send us any more for par collection as we will return them unless the Government is going to put on a system that will force all Banks to remit at par, and if this be true you won't have to force us, we will promptly comply. I have told you personally and the records of the Federal Reserve Bank will show that we remitted at par a long time, but my neighbor and competitor across the street continued to collect Exchange and the National Banks in this part of the country had written on their checks "Payable in exchange at current rates," thereby allowing the National Banks to continue receiving exchange; after seeing all this I felt that it was unfair to the stockholders of the Holmes County 216 Bank to lose this revenue and we quit. We believe in the par clearance system when all banks are put on the same basis. I feel like Ben Tillman speaking to a Republican Senate on the Tariff Bill, that he was opposed to it, but if they were going to have it anyhow he wanted South Carolina to get her part of the steal, and I think that if other banks are allowed to get exchange that it would not be right for us to lose in this way. I realize the Government has the power to put on the par system and boycott banks that do not confirm. And when you get things in shape for it, give us the day and date and no bluff and we will promptly comply; write us frankly what to depend on. We want to do what is right, and if you look up the records you will see our bank sold more Liberty Bonds than the average bank according to assets and Def., and we are today carrying $20,000.00 in Treasury Certificates and $29,000.00 in Liberty Bonds. Not that we could not loan at a greater rate of interest, but to be loyal, and what we want to know what the Government is really going to do and the date; that is, when non-member banks and National Banks having on their checks "Payable in exchange at current rates," all will have to pay at par according to Government regulations, and a penalty thereto for not so doing. We would also like to know if when the Government has a duly authorized bank in towns to present checks in town where there is no National Bank will these checks be payable in exchange or cash. I have tried to write you so you can understand me and I hope I have made our position clear to you.

I remember pleasantly meeting you at Marianna last March at the Bankers' meeting and at Palatka four years ago.

With regards to you. Yours truly, (Signed) D. L. Grenn, President.

P. S.—I am writing our Comptroller and asking his advice in the matter.

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217 February 6th, 1920.

Mr. H. W. Bivins, Cashier the Bank of Clearwater, Clearwater, Fla.

DEAR MR. BIVINS: You are no doubt more or less familiar with the efforts the Federal Reserve Banks are making to establish a national par list. At the present time upwards of 27,000 banks in the United States are remitting to the Federal Reserve Banks at par in payment of items drawn on themselves. A very large percentage of these banks voluntarily agreed to do so. In some cases the Federal Reserve Banks have been afforded facilities by non-member banks for collecting items at par drawn on other non-member banks, and, while such an arrangement is usually mutually satisfactory, it is only desirable from our standpoint, and undoubtedly from that of the non-member bank, to remit to us direct rather than to have their items presented to them through other non-member banks.

By courtesy of the Peoples Bank of Clearwater we have been enabled to add the name of your good bank to our par list, and we have for some months past been effecting the collection of items drawn on you through that bank. We presume that it would be much more to your liking to have the items we receive sent direct to you for remittance to us, and we desire to propose to you that you agree to remit to us at par. We will accept, in payment of our cash letters containing items drawn on you, your drafts on any of your correspondent banks, provided they are members of the Federal Reserve System. We presume that it would be most convenient for you to send us your drafts on Tampa, and that would be entirely satisfactory to us, as would also your drafts drawn on New York or any Federal Reserve or Branch Federal Reserve city. However, we do not restrict you to such cities, but will accept your exchange, as previously stated,
218 drawn on any member bank. We will, also, be glad to extend to you the privilege, if you desire to exercise it, of shipping us currency at our expense in payment of our cash letters, and if you desire to do so, you may establish a tran-it or clearing account with us, and we will collect for you, at par, any items you may send us drawn on any bank on our par list. We will give you immediate credit on day of receipt in Atlanta or Jacksonville for items drawn on banks in these cities, but we will have to defer credit to you in accordance with our time schedule for items drawn on other points.

If you desire to establish a clearing account with us, it would, of course, be advisable for you to route direct to our Branch at Jacksonville your letters containing items drawn on Florida points, and to route to Atlanta your letters containing items drawn on other points. The balance that you would accumulate in the clearing account would, of course, be subject to your draft, or could be used, if you so desire, to pay us for our cash letters to you.

Please give these matters your careful consideration, and have the kindness to advise us at your early convenience, particularly as to whether or not you will agree to remit to us at par, and with regard, also, to the establishment of a clearing account with us, if you desire

to do that. Asking the favor of your usual courteous and prompt attention, we are, Very truly yours, —— ——, Cashier. M. W. B.:R. B.

February 26th, 1920.

Mr. H. W. Bivins, Vice-President Bank of Clearwater, Clearwater, Fla.

DEAR SIR: We are in receipt of yours February 24th, requesting that we send to you your own items for remittance at par.

219 We have accordingly telegraphed our Jacksonville Branch to discontinue collecting your items by express, and to send them direct to you. It may be that some letters are already in process of collection through the Express Company, but these were, of course, forwarded before your letter was received.

All items on your bank will henceforth be forwarded to you by our Jacksonville Branch to whom you should remit. If at any time it is more convenient for you to pay your checks by the shipment of currency, you, of course, understand that we absorb charges, and our Jacksonville Branch, at your request, will be pleased to furnish you with the necessary forms for declaring insurance, under our policy, on shipments by registered mail.

We appreciate the spirit with which you have accepted the situation, and it was with regret that we adopted the method of collecting your checks over your counter, but as the law does not permit us to pay exchange, we had to arrange in some way to collect the items.

Should you at any time wish to open with us a non-member bank clearing account, in order to collect at par checks and drafts on banks shown in our par list, we will be placed to hear from you. Very truly yours, —— ——, Deputy Governor. L. C. A.:D.

220 Enterprise Banking Company, Incorporated.

Enterprise, Ala., February 7, 1920.

Federal Reserve Bank, Atlanta, Ga.

GENTLEMEN: We prefer to not have our checks sent to us by express and until further notice we will remit you our New York Exchange at par for checks that are good on our bank if you will send them direct to us by mail and send postage. Trusting this will be satisfactory, Yours truly, (S.) J. B. Byrd, President.

February 9, 1920.

Mr. J. B. Byrd, President Enterprise Banking Company, Enterprise, Ala.

DEAR SIR: Receipt is acknowledged of yours February 7th, advising that, until further notice, you will remit at par in New York exchange for checks drawn upon your good bank.

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We are accordingly instructing our transit department to discontinue forwarding the items for collection by express, and to send them direct to you, together with stamped envelope for returns.

If it is your intention at any time to avail of the privilege of sending us currency, at our expense, in payment of checks that we may send you, please advise, so that we may furnish you with
221 the necessary forms for declaring insurance, under our policy, on shipments by registered mail. Very truly yours, ——, Deputy Governor. L. C. A.:D.

Bourg State Bank.

Bourg, La., Feb. 13th, 1920.

Hon. M. B. Wellborn, Governor, Federal Reserve Bank of Atlanta, Atlanta, Ga.

DEAR SIR: By a ruling of the Board of Directors, at a meeting held Feb. 11th, 1920, it was resolved: That on and after Feb. 27th, that the Bourg State Bank follow the custom of the other banks in the Parish and refuse to remit at par to the Federal Reserve Branch at New Orleans, La., which is quite an imposition on us, and also a great loss.

I understand the Bourg State Bank had consented to remit at par, and a trial has convinced it that it cannot be so accommodating, at a detriment to its own welfare.

Therefore kindly guide yourselves accordingly, as I must carry the mandates of the Board strictly and obediently. Very respectfully, Bourg State Bank. (Signed) Elgin J. Blanchard, Cashier.

222 Federal Reserve Bank of Atlanta.

February 17, 1920.

Mr. Elgin J. Blanchard, Cashier, Bourg State Bank, Bourg, La.

DEAR SIR: Receipt is acknowledged of yours February 13th, advising that your Board of Directors has instructed you to discontinue remitting at par to the New Orleans Branch of the Federal Reserve Bank of Atlanta, New Orleans, La., effective February 27th.

The par list of the Federal Reserve System goes to press about the first of each month, and, it is usually the 15th before it is distributed throughout the United States. The next issue will be printed around March 1st, and, it will be March 15th before it will be in the hands of the banks interested. Inasmuch as the Federal Reserve Act does not permit us to pay exchange and we must handle your items at least until the next par list is distributed, we will ask that you kindly have your Board of Directors modify the resolution so as to permit you to remit at par until March 15th. In the meantime, we will remove the name of your good bank from the par list, until we can make arrangements to collect the items in some manner which will not involve the payment of exchange.

Thanking you for your consideration, and, awaiting the favor of your reply, we are, Very truly yours, —— ——, Deputy Governor.

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223 Bourg, La., Feb. 24, 1920.

DEAR SIR: In reference to the above letter, will say that the three Gentlemen who compose the discount committee, the President, and myself, have modified the above to agree with your request, with the responsibility of it perhaps not meeting the approval of the Board. However, we will remit to you to that date. But it is not within my power to remit any longer than March 15th. Elgin J. Blanchard, Cashier.

Feb. 16, 1920.

Mr. D. L. Green, President, Holmes County Bank, Bonifay, Florida.

DEAR SIR: Absence from the city has delayed response to your letter of February 5th, addressed to our Jacksonville Branch, which was referred to me for reply, and also your letter of February 12th, asking for reply.

Since your letter was written, we have discontinued handling items drawn on your bank, and have removed your name from our par list. Our arrangement for collecting checks drawn on you, by presenting them for payment in cash in event you did not see your way clear to remit at par, have not been perfected. On account of the large number of non par remitting banks in the Sixth Federal Reserve District, it is not possible for us to arbitrarily commence collection at par on all banks at one time, and, therefore, we have to go about it by setting off certain areas to be taken up at a time. As soon as we are able to make the necessary arrangements in your city, we will again place the name of your bank on our par list, and begin collecting the items by presenting them for payment in cash, unless you will advise us that you will remit at par,
224 reserving the right to discontinue doing so in event the case now pending in court against us is decided adversely.

By remitting at par to our Jacksonville Branch, you will have the privilege of sending them Jacksonville or other Reserve City Exchange in payment, or, when more convenient, you can ship currency at our expense. Our Jacksonville Branch would furnish you with the necessary forms for declaring insurance on shipments by registered mail. Should we find it necessary to arrange to present the items at your counter, payment will be demanded in cash only.

You, of course, realize that in our efforts to induce banks to remit at par, we are endeavoring to carry out a statute that was enacted by a Congress of the United States, which has been interpreted by the Attorney General of the United States as requiring par remittance to all Federal Reserve Banks. If the non-member banks believe that this law is unjust, they should bring the matter to the attention of those who enacted it in an effort to have it modified, but until some further action is taken by Congress, it seems to us that the banks should abide by the law. Very truly yours, —— ——, Deputy Governor. LCA:d.

Phifer State Bank, Gainesville, Fla.

Feb. 19, 1920.

Federal Reserve Bank, Jacksonville, Fla.

DEAR SIRS: Would you not pay the charges on currency sent you since we are remitting at par? Could we not send you currency and then check against it? We believe this complies with
225 your rules. If we are to continue to clear at par, we ought to be able to get some concessions in some way. Yours very truly, H. L. Phifer, Cashier.

February 21, 1920.

Mr. H. L. Phifer, Cashier, Phifer State Bank, Gainesville, Fla.

DEAR SIR: Yours of February 19th addressed to our Jacksonville branch relative to shipment of currency at our expense, has been referred to this office for reply.

It will be entirely agreeable for you to open with us a non-member bank clearing account, and send us currency for credit to be drawn against in regular course. On currency sent to our Jacksonville Branch for credit, up to an amount equal to cash letters sent you by that branch, we will be pleased to absorb the cost of shipment, but any currency sent to that branch over and above the amount of our cash letters, the carrying charges will have to be borne by you. We enclose copy of our circular G-118, which gives instructions relative to the shipment of currency on which we absorb the charges, and by which our depositors should be guided.

You, of course, understand that in opening a non-member bank clearing account you are privileged to send us for collection and credit checks drawn on any of the banks shown on our par list, but items payable outside of Jacksonville are subject to deferred credit for the time involved in effecting collection; that is, they are credited in the uncollected funds account, and when available in accordance with our time schedule, the amounts are transferred to the collected funds account, which is subject to your check, either in payment of our cash letters, or as you might desire.

Our only requirement in connection with a non-member
226 bank clearing account is that a balance must be maintained in the collected funds account in an amount equal to the average amount of items drawn on yourselves that are sent you by us for remittance.

You, of course, have the privilege of remitting for cash letters in currency at our expense, without the necessity of opening a non-member bank clearing account, and our Jacksonville Branch will be pleased to furnish you, upon request, with the necessary forms for declaring insurance under our policy on registered mail shipment. Very truly yours, —— ——, Deputy Governor. LCA:D. Enc.

Bank of Clearwater, Clearwater, Florida.

February 24th, 1920.

Federal Reserve Bank, Atlanta, Ga.

GENTLEMEN: Referring to your recent communication with regard to remitting your Bank at par for items on us, and our reply thereto.

We note that you have adopted the policy of sending these items via Express Co. Of course, we think this policy is wrong but we are not looking for any fight on this subject, it isn't worth it, so therefore, we suggest that in lieu of the Express Co. you send them on to us and we will of course remit you flat. This will end the fight as far as we are concerned and be more patriotic on the part of both.

227 We have also requested the Federal Reserve Bank Branch at Jacksonville to do likewise and trust you will comply with our request. Very truly, (Signed) H. W. Bivins, Vice-President. B. D.

The State Bank of Bartow, Bartow, Fla.

Feb. 19, 1920.

Federal Reserve Bank, Jacksonville, Florida.

GENTLEMEN: Please be advised that effective March 1st, this Bank will discontinue paring items for the Federal Reserve Bank of Jacksonville, or Atlanta, or in fact any other Federal Reserve Bank.

Our rates on and after March 1st, will be 1/10 of 1%.

Please acknowledge receipt of this letter for our files. Very truly, (Signed) John L. Fouts, Pres.

February 24, 1920.

Mr. John L. Fouts, President the State Bank of Bartow, Bartow, Florida.

DEAR SIR: Yours of February 19th, addressed to our Jacksonville Branch, advised that effective March 1st, you will discontinue remitting at par for items drawn upon you, has been referred to this office for reply:

228 We regret very much that you deem it advisable to discontinue remitting at par, and will remove the name of your bank from our par list until we are able to make other arrangements for the collection of the checks, for as you know, we are not permitted under the law to pay exchange. We will ask, however, that you please continue remitting at par until March 15th, as we are obligated to handle the items until a new issue of our par list has been distributed throughout the United States. The next issue will go to press about March 1st, but will not receive distribution until about the 15th. We feel sure, therefore, that you will assist us in carrying out our obligation by continuing your agreement to remit at par

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until we can give, by a new issue of the par list, the reasonable notice to which our depositors are entitled.

Awaiting the favor of your reply, we are, Very truly yours, ——, Deputy Governor. L. C. A.: D.

State Bank of Bartow, Bartow, Florida.

Feb. 28, 1920.

Federal Reserve Bank, Atlanta, Ga.

GENTLEMEN: Replying to your favor regarding our paring items for you, until the 15th of March, beg to advise that we will do so. This will give you time to get out your new list and will be agreeable to us.

We will discontinue paring items that you send us promptly on the 15th. Yours truly, (Signed) John L. Fouts, Pres. J. L. F.: H. O. W.

March 1, 1921.

Mr. John L. Fouts, President State Bank of Bartow, Bartow, Florida.

DEAR SIR: Receipt is acknowledged of yours February 28th, in response to our respects of the 24th, advising that you will continue to remit at par until March 15th.

Thanking you for your courtesy, we are, Yours very truly, ——, Deputy Governor. L. C. A.: D.

Bank of Hattiesburg and Trust Co., Hattiesburg, Miss.

March 2nd, 1920.

Mr. M. B. Wellborn, Governor Federal Reserve Bank, Atlanta, Ga.

DEAR Mr. WELLBORN: In view of the fact that the Mississippi Legislature has seen fit within the past few days to pass certain acts making it mandatory on the State Banks of this State to charge exchange on cash items and further in view of the fact that we are one of the plaintiffs in the suit of the American Bank and Trust Company, et al., of Cordele, Georgia, vs. the Federal Reserve Bank of Atlanta, Georgia, we deem it to our best interest to notify you, that beginning March the 15th, we will cease to remit for items drawn on ourselves and presented to us through the Federal Reserve Bank. We will continue to refuse to remit for these items at par until such a time as the validity of the recently enacted law by the Mississippi Legislature is tested and also await the final outcome of the suit of the American Bank and Trust Company et al. vs. the Federal Reserve Bank.

In other words, we are not going to continue after March the 15th, to handle items on ourselves, presented to us through the Federal Reserve Bank, at par until we have to. As you understand, at the time we agreed to remit for these items we were doing it under protest—now, we see a good loop hole to escape and we are going

to do it. Cordially yours, (Signed) J. O. Rea. J. O. R./r. C
Mr. Marcus A. Walker, Mgr., New Orleans.

March 4th, 1920.

DEAR MR. REA: I have your letter of March 2nd and note wi
much interest that the Mississippi Legislature has passed certain la
relative to State banks charging exchange. If it is convenient
would appreciate it if you will send me a copy of that Act.

We note your request to take the name of your bank off of o
par list on March 15th. This will be done by us. Since the ca
is now in the Federal Court in Atlanta and you are a party to th
suit, I desire to say that we welcome this way of settling the whol
matter, for we regard the court as the proper place to construe th
laws under which we are acting. Very truly yours, —— ——, Gov
ernor. Mr. J. O. Rea, Vice-President, Bank of Hattiesburg, Hattie
burg, Miss.

231 State Bank of Haines City.

Deposits Insured.

Haines City, Fla., March 9th, 1920.

Federal Reserve Bank, Atlanta, Ga.

GENTLEMEN: At the time we were forced through coercion t
agree to clear checks for the Federal Reserve Bank at par, we in
formed you that we would do this subject to the actions of th
courts in the case of the Georgia Bankers against the Federal Reser
Bank. We noticed that while this suit is pending you have discon
tinued trying to collect checks at par on them.

In common with a great many banks in the State of Florida w
have asked the Georgia bankers to make us a party to the suit, and
in view of the stand that we took when we agreed to clear at pa
we feel that you should discontinue sending us items till the ou
come of the suit is settled.

If we lose the suit we will be forced to clear at par till the law
changed; in the meantime we do not feel called upon to do it.

Trusting that you see our position in the matter and that you
will act accordingly, we remain, Yours very truly, (S.) Lisle W.
Smith, Vice-President.

March 11, 1920.

Mr. Lisle W. Smith, Vice-President State Bank of Haines City
Haines City, Florida.

DEAR SIR: Receipt is acknowledged of yours March 9th, request
ing that in view of your having joined the litigation pend
232 ing against us, we discontinue sending your items to you for
par remittance. We are accordingly instructing our Jackson
ville Branch, effective today, to refrain from handling items drawn
upon you until the injunction against us is dissolved. We assume

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course, that you will remit at par for the items that are already transit.

We appreciate your position in the matter and thank you for your urtesy. We understand from your letter that should the suit be ecided in our favor, you will resume remitting at par until the law amended. Very truly yours, —— ——, Deputy Governor. L. C. .D.

Peoples Trust & Savings Bank, Goodwater, Alabama.

March 11, 1920.

ederal Reserve Bank, Atlanta, Ga.

GENTLEMEN: We have concluded it would not be fair for us to mit to you at par, while we are charging other banks exchange, d for this reason request that you take us off your par list. Yours ry truly, (Signed) J. S. Gilliland, Vice-President.

March 13, 1920.

. J. S. Gilliland, Vice-President Peoples Trust & Savings Bank, Goodwater, Alabama.

DEAR SIR: Receipt is acknowledged of yours of March 11th, advis- that you will discontinue remitting to us at par, and requesting that we remove your name from our par list.

We regret very much that you deem it advisable to dis- continue remitting at par, and in view of the fact that we wish give due respect to the courts in connection with the litigation that ending against us, we will not at this time make collection of ur items through other channels, but will instruct our Birming- m Branch to refrain from handling items drawn upon you. We sume, of course, that you will remit at par for the letters that are eady in transit. Very truly yours, —— ——, Deputy Governor. CA:D.

Citizens Bank, Hattiesburg, Miss.

March 12th, 1920.

ederal Reserve Bank, Atlanta, Ga.

GENTLEMEN: On December 27th, 1919, we indicated our willing- s and authorized you to place our name on your list of par banks this district. We accepted your proposal with the reservations in mind that we would withdraw our name at the first opportunity, lieving that we are just as much entitled to exchange on our ecks as the Government is entitled to a fee for transmitting money post office money order.

The recent enactment by the Legislature of Mississippi of House ill No. 651, making it a law of this State that banks shall charge change at the rate of $1.00 per thousand on checks and cash items, t only offers us an opportunity, but makes it mandatory that we rise you of our intention to cancel the agreement we made with

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you to remit to your bank for all items you sent us drawn
234 our bank. We believe that it is fair and right that y
should have some advance notice of our intention, and
think that eighteen days would be a reasonable notice to you. The
fore, please be advised that we will discontinue remitting to you
par on items drawn on this bank on and after April 1st, 1920.

We trust that you will realize that we are acting for our own b
interests, and requesting that you acknowledge receipt of our lett
we are, Yours very truly, (Signed) G. M. McWilliams, Vice-Pre
dent. M/J.

Copy to New Orleans Branch, Federal Reserve Bank, New Orlea
La.

March 15th, 1920.

Mr. G. M. McWilliams, Vice-President Citizens Bank, Hattiesbu
Miss.

DEAR SIR: Receipt is acknowledged of yours of March 12th, a
vising that in view of the enactment by the Legislature of Mississ
of a statute authorizing charge of exchange for remission of ite
you will, on April 1st, discontinue remitting to us at par for ite
drawn upon you, as agreed in yours of December 27th.

We will accordingly remove the name of your good bank from t
next issue of our par list, and have instructed our New Orlea
Branch, effective April 1st, to refrain from handling items dra
upon you for, as stated in previous occasions, we are not permitted
law to pay exchange. Very truly yours, —— ——, Deputy Gov
nor. LCA/D.

235 Federal Reserve Board, Washington.

April 5, 1920.
X—1881

Subject: Federal Reserve Clearing System.

DEAR SIR: There is enclosed herewith for your information co
of a letter written to a United States Senator in reply to a letter fr
him to the board with regard to a complaint made to the Senator
a State banking commissioner that banks in certain States have be
given special privileges by the Federal Reserve Board in being p
mitted to continue their exchange charges while banks in oth
States are remitting at par. Very truly yours, —— ——, Governo
Enclosure. To Chairmen of all F. R. Banks.

April 1, 1920.
X—1881

I have your letter of March 31st enclosing copy of a letter from t
Commissioner of Banking of the State of Wisconsin. I am mo
obliged to you for giving me an opportunity of removing a mistak
impression that the Commissioner appears to have that banks

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ain States have been given special privileges by the Federal Re-
e Board by being permitted to continue their exchange charges
le banks in other States are remitting at par.

enclose for your information copy of a response made by the Board on January 26, 1920, to a resolution of the Senate, which explains at considerable length the position that has been taken by the Federal Reserve Board and the various eral Reserve Banks in the matter of the country-wide clearing of ks. In this communication reference is made to the provisions Sections 13 and 16 of the Federal Reserve Act and to the opinion he Attorney General of the United States as to the intent of these ions. The Board is charged with the duty and responsibility of ugurating a complete check clearing system throughout the United es; the Federal Reserve banks must receive at par from member ks checks upon whomsoever drawn which are payable upon pre-ation, and the so-called "Hardwick Amendment" to Section 13 horizes both member and non-member banks to make "reasonable ges, to be determined and regulated by the Federal Reserve rd, but in no case to exceed 10 cents per $100 or fraction thereof, ed on the total of checks and drafts presented at any one time, collection or payment of checks and drafts and remission therefor exchange or otherwise; but no such charges shall be made against Federal Reserve Banks."

In view of the opinion of the Attorney General, the Federal Re-e Banks do not feel authorized to pay any charges to banks for ittances for checks drawn upon them and sent for collection by Federal Reserve Banks. While banks are still authorized to ge each other for such service, they are prohibited from charg-the Federal Reserve Banks, which are required to receive from mber banks at par all checks which are payable upon presentation. s it came about that the Federal Reserve Banks found them-es in possession of checks drawn upon non-member banks which y could not send to the banks upon which the checks were drawn the reason that those banks had declined to remit at par, and it me necessary therefore, as the law does not provide any penalty n non-member banks for refusing to remit at par, for the Federal Reserve Banks to begin a campaign of education to induce non-member banks to remit at par, or failing this, to provide themselves with some other means of collecting checks drawn n non-assenting banks.

Exchange charges are based primarily upon the cost of making sfers of funds from one section or from one country to another. our dealings with foreign countries exchange is in our favor or nst us according to the balance of trade and the flow of credits. under normal conditions the rate of exchange is governed by approximates the cost of transporting gold. This cost includes iers' charges, insurance, interest for time in transit, and loss by sion. So, in our domestic exchanges, the charge was based origi-y upon the cost of transferring funds from one point to another. y years ago when our transportation facilities had not been fully

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developed and express rates were high the average cost of our dom
exchanges was about 1½ per cent, or $15 per $1,000. As our t
portation facilities improved, as the country became more thickly
tled and the flow of goods between the various sections became l
and more constant, the result was that balances could be s
through the medium of bank drafts without involving the shipm
currency in such large amounts, and exchange costs declined s
thirty years ago the maximum charge was generally about $2.5
thousand dollars. During the past twenty-five years the actual
of making domestic exchange have been decreasing steadily and
consequence has been that there has been a fall in the average ch
made by banks, so that during the past ten years $1 per thousand
lars has been the maximum charge in many sections of the cou
although in some of the less thickly populated and more remote
tions higher rates have obtained.

Since the establishment of the Federal Reserve Banks the co
transferring balances from one section of the country to another
been almost entirely eliminated. Each Federal Reserve B
238 carries a portion of its gold reserve in a gold settlement f
which is kept in the Treasury at Washington, and there
daily telegraphic clearing conducted by the Federal Reserve B
for all twelve banks and for their branches. The amount of
in the fund is practically a stable quantity, but its ownership v
from day to day according to the debits and credits to the diff
banks. Transfers are made by the Federal Reserve Banks for m
ber banks, and also for non-member banks through the mediu
member banks, by telegraph without any charge whatever to
member bank or its client, all costs being borne by the Federal
serve Banks. Thus, a bank in Wisconsin or California, Main
Texas, can secure an instantaneous transfer to any one of the n
Federal Reserve cities or to the twenty cities where there are br
Federal Reserve Banks without any expense whatsoever, and the
total of these transfers is settled daily through the gold settlem
fund above referred to. The Federal Reserve Banks pay all
of transporting currency to or from their member banks as w
transportation charges on currency sent them by non-member b
in payment of checks.

The total volume of transactions through the gold settlement f
in the year 1919 was approximately $74,000,000,000, and the
cost, including the expense of the leased wires, was about $250
This cost was borne by the Federal Reserve Banks and does
represent any expense whatever to the member banks or their
tomers. Thus it will be seen that the basic cost of making dom
exchange in the year 1919 was three-tenths of a cent for
$1,000 transferred. A charge of 10c. per $100 on the amount cle
through the Gold Settlement fund would have involved an expen
$1 for each $1,000 transferred, or about $74,000,000 for the e
amount.

The intra-district clearings made by the Federal Reserve Ba
eliminating duplications, amounted to about $135,000,000,000.

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the total expense of these transfers was borne by the Federal Reserve Banks. Had the Federal Reserve Banks been obliged to pay for these transfers at the rate of 10c. per $100, it will en that the total expense would have been $135,000,000, which nt is far in excess of the total earnings of the Federal Reserve s and therefore could not have been absorbed by them. If not ted, the charge would have had to have been transferred to the sitors of the checks, so it will be seen that a charge of 10c. per upon the business handled by the Federal Reserve Banks would involved last year a cost to the commerce and industry of this try of at least $135,000,000.

owever, the practice of making exchange charges, which began n there was a real justification for such charges because of the ex- of transferring funds, had become so deeply rooted that most e banks very naturally looked upon the charge as a normal and inate source of revenue and were reluctant to give it up. Un- e Federal Reserve Act was amended in June, 1917, the Federal rve Banks had no mandate for undertaking to collect checks on member banks at par, and their activities with respect to clear- s were devoted mainly to the collection of checks on member s. But after the passage of the "Hardwick Amendment" with proviso above quoted, which is underscored, it became the duty e Federal reserve banks to undertake to establish a complete clearing system, including checks drawn on non-member banks ll as on members. There are approximately twenty thousand member banks in this country, and at the time the Act was ed, three years ago, a large majority of them were firmly com- d to the policy of making an exchange or service charge for ing for checks drawn upon them. It was clearly impracticable e absence of some legislation penalizing banks which would not remit at par to establish a complete clearing system over night. It was therefore determined to begin a progressive campaign of education along the line of least resistance.

large majority of the banks in New England have been for the twenty years remitting to the banks of the Boston Clearing se at par, and it was decided to establish in that district the first plete Federal reserve clearing system. A few banks in Vermont ted, but within a few months they all came into line. The sys- was then extended to the New York district. In a part of that rt the opposition was more determined and it was necessary for le to make collections on some of the banks through express panies. Then the system was extended to the Philadelphia dis- , and afterward to the Chicago, Cleveland, Kansas City and Dal- istricts, as well as to certain States in other districts.

was deemed wise not to force matters by making collections ugh the express companies or other agencies until the non-mem- banks had had the whole situation fully explained to them and given an opportunity of agreeing to make remittances at par. n when a majority of the banks in a Federal reserve district had greed arrangements were made to collect on non-assenting banks

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by means of agencies, announcement then being made that the
tem was operative throughout the entire district or in particular S
in a district.

There is pronounced opposition in Minnesota, and the Federal
serve Bank of Minneapolis does not feel that the time is opportune
the announcement of a complete clearing system in its district. No
ern Wisconsin is in the Minneapolis district and southern Wis
sin in the Chicago district; hence the apparent inconsistency refe
to by the Commissioner. Northern Louisiana as in the Dallas
trict and southern Louisiana in the Atlanta district. The Da
bank has perfected its clearing system while the Atlanta bank
not. In the Atlanta district, which embraces parts of Tenne
and Mississippi and all of Alabama, Georgia and Flor
241 there is very great opposition to the Federal reserve clear
system on the part of State banks. This opposition exists
in North and South Carolina, which are in the Richmond distr
It is not so pronounced in the State of Virginia, and the Federal
serve Bank of Richmond has announced that the clearing syste
in effect as of April 1 throughout the State of Virginia, but it is
yet in effect in the Carolinas, except as to member and assen
banks.

I enclose herewith copy of a law which has recently been
acted by the Legislature of Mississippi, from which you will
that banks in that State are required to pay checks, by whomso
presented, which come through another bank at the rate of $6
per $100. In view of this law it is impossible for the Fede
reserve bank to enforce the will of Congress in the State of M
sissippi. In Georgia a number of non-member banks institu
proceedings against the Federal reserve bank and secured a tem
rary injunction restraining the bank from collecting checks by ma
ing presentation through an agent for payment over the count
and as under the terms of the "Hardwick Amendment" the Fe
eral reserve bank cannot pay exchange to the banks upon wh
checks are drawn, it has no recourse except to decline to take su
checks at all. In Alabama, where the Federal reserve bank
tempted to appoint agents to collect checks, it found in many ca
that it was impossible to get anyone to accept the agency, and
one case where a reputable merchant was induced to accept t
agency he gave it up after a few days because the local banks h
convinced him that his business would suffer if he continued to a
for the Federal reserve bank.

The Board is doing everything in its power to have the clearin
system apply equally to all sections and to all banks. Includi
member banks there are about thirty thousand banks in the Unit
States and twenty-seven thousand of them are now remitting
par. The three thousand which decline to remit are ma
242 ing a determined effort to defeat the purposes of the Fe
eral Reserve Act with respect to a country-wide check cle
ing system, and unless Congress should be willing to enact so
law making it decidedly to the interest of banks to remit at pa
just as in 1865, by the exercise of its taxing power, Congress mi

the interest of the State banks to retire their State bank notes, difficult to see how it is possible to accelerate the present rate progress in the development of a complete nation-wide check ring system through the Federal Reserve Banks.

the foregoing I have endeavored to show (1) that there is no er a basic cost to the banks of the country in making domestic hanges, (2) that Congress has forbidden both member and non-mber banks to make exchange or service charges against the Fed- reserve banks, and (3) that the Attorney General of the United es has held that Federal reserve banks are not permitted to pay h charges.

may add that the Federal reserve banks give non-member ks which agree to remit at par the option of paying by check some convenient banking center or by shipment of currency at expense of the Federal reserve bank. Stamped envelopes are vs sent a non-member bank for use in making remittances. n-member banks are not asked to perform any collection service; r are merely asked to waive personal presentation of checks n upon themselves by their own depositors and to pay them ugh the mails without making any charge, and the law ap- rs clearly to direct them to do this.

Some of the banks, member banks as well as non-members, are ng their depositors to use a check which has imprinted upon face some restrictive clause, such as "Payable only in exchange current rates," or "Not payable in cash if presented for account a Federal Reserve bank." I enclose for your further informa- forms of notices which are being used by manufacturers and jobbers in various centers in returning checks to their cus- tomers which can not be collected through a Federal Re- serve Bank, and also copy of a letter which I am informed ell-known shoe manufacturing concern is sending to its cus- ers.

The legal proceedings against the Federal Reserve Bank of At- a, to which reference is made above, were brought in a State rt. The case was transferred to a Federal court and was heard its merits a few days ago, but up to this time no decision has n handed down. In any event, an appeal will probably be en to a higher court—possibly to the Supreme Court of the ited States—and it is probable that several months will elapse re a complete clearing system can be established in the Atlanta rict. Very truly yours, (Signed) W. P. G. Harding, Governor.

Merchants and Farmers Bank, Davisboro, Ga.

April 8, 1920.

deral Reserve Bank, Atlanta, Ga.

GENTLEMEN: Please take notice that as per our agreement with for clearing items free of exchange, beg to advise that we wish terminate this agreement as made by us, it being the agreement within thirty days after notifying you this agreement would

be cancelled. We are unable to handle these items at par any longer, and wish to terminate the agreement as stated above. Very truly yours, I. W. Arnold, Cashier.

244

April 9, 1920.

Mr. I. W. Arnold, Cashier Merchants & Farmers Bank, Davisboro Georgia.

DEAR SIR: Receipt is acknowledged of yours April 8th, giving notice in accordance with your agreement, that after 30 days from this date have elapsed, you desire to discontinue remitting at par for checks drawn upon you. We are, of course, willing to live up to our agreement to permit you to cancel the arrangement on 30 days' notice, but will ask that you extend that time until May 15th which would be 36 days. Our reason for asking this is that the next issue of our par list will not go to press until May 1st, and it is usually about fifteen days before it is distributed throughout the United States.

We regret that after remitting at par for so long a time, you deem it advisable to discontinue doing so. You are, of course aware of the fact that announcement was made by us a few months ago that we were going to begin handling for our depositors all checks drawn on banks, whether members or non-members. We invited the non-member banks to remit to us at par, and to open clearing accounts with us, if they desired to do so, at the same time stating that in event they did not remit at par, we would have to arrange to present their items for payment in cash, as the law did not permit us to pay exchange. A temporary injunction was obtained by some of the banks, and in order that the courts should receive due respect at our hands, we for the time being abandoned arrangements for personal presentation of the checks. You have perhaps noted also that Judge Beverly D. Evans, of the United States District Court, rendered decision about a week ago dismissing the bill for want of equity. This, of course, permits us to go ahead and collect the checks as we see fit, so long as we do
215 it in a lawful manner, and it occurs to us that you would perhaps prefer to continue remitting at par rather than have the items presented to you for payment in cash, when we make arrangements along that line.

We would, of course, be glad to accord you the privilege of opening a non-member bank clearing account, so that you could collect through us at par checks and and drafts drawn upon the 30,260 banks now shown in our par list, and, if interested, we will be pleased to give you details with respect to such account.

Thanking you in anticipation for the courtesy of a reply as to whether you still wish to avail yourself of the privilege of abrogating your agreement to remit at par, and if so whether you will extend the time until May 15th, we are, Yours very truly, —— ——, Deputy Governor. LCA:D.

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Federal Reserve Board, Washington.

April 12, 1920.
X—1896.

DEAR CONGRESSMAN: The situation regarding the Federal Reserve clearing system can be summed up in a very few words. There are certain clauses in Sections 13 and 16 of the Federal Reserve Act which seem to require the Federal Reserve Board to establish a system for the clearing by the Federal Reserve Banks of all checks payable upon presentation within their respective districts regardless of whether the checks are drawn upon member or non-member banks. It appears also that the Federal Reserve Banks are required to receive these checks when tendered them for deposit by
246 member banks, at par—that is, without making any deduction from the face amount for collection or exchange charges. Section 13 empowers the Federal Reserve Board to fix reasonable charges, not to exceed 10¢ per $100, which may be made by one bank against another bank for remitting in exchange or otherwise for checks received for collection, but there is a proviso that "no such charges shall be made against Federal Reserve Banks."

Upon being asked for an opinion, the Attorney General of the United States has construed this provision literally and has advised the Board that Federal Reserve Banks cannot lawfully pay any charge or fee to a bank for remitting to the Federal Reserve Bank for checks drawn upon the payer bank which have been sent to it by the Federal Reserve Bank for payment in exchange or otherwise.

It is evident therefore that a Federal Reserve Bank receiving checks on non-member banks for deposit must proceed to collect these checks and that if the banks upon which they are drawn will not remit at par the Federal Reserve Bank is obliged to provide itself with some other means of making the collection. The Federal Reserve Banks therefore have called the attention of non-member banks to these provisions of law and have stated that stamped envelopes will be sent in each case to the remitting bank in order that there may be no actual expense incurred by the payer bank in making the remittance and that if it is more convenient remittance may be made in currency at the expense of the Federal Reserve Bank. All non-member banks have been advised that if they do not care to remit to the Federal Reserve Banks at par, collection will be made through some outside agency by having the checks presented at the bank counters for payment.

If this is coercion as contended by your constituent it is unavoidable, for regardless of the question as to whether Congress has the right to legislate in any way that results in the diminution of the profits of State banks, it clearly has the power to legislate in
247 matters relating to the manner in which the Federal Reserve Banks shall operate. The Board's view therefore is that Congress (1) has directed all banks, non-members as well as mem-

bers, not to make exchange charges against Federal Reserve Banks, (2) has directed the Federal Reserve Banks to receive on deposit at par any checks and drafts which are payable on presentation, and (3) has directed the Federal Reserve Banks not to pay any exchange charges to banks in making these collections.

Whether Congress has the constitutional right to enact a law prohibiting a Federal Reserve Bank from paying exchange to a non-member bank on checks drawn upon the non-member bank by its own depositors may be argued to be a question of law which should be determined ultimately by the courts. If it is desired to test the constitutionality of the law, it appears that the banks which question its validity should initiate proceedings rather than the Federal Reserve Board. If, on the other hand, they should concede that Congress has the right to legislate in the manner it has done but believe that the law is oppressive, unjust or unwise, it would appear that they should appeal to Congress with the view of having the objectionable features of the Act stricken out or modified. Here again it would seem that the initiative should be taken by the banks which feel themselves aggrieved in the matter. If these banks, although entertaining doubts as to the validity of the law, should feel that because of the length of time necessarily involved in obtaining a judicial and final interpretation it is undesirable to litigate, then again it would seem that recourse should be had to the more direct method of appealing to Congress. In that case, however, it would seem that the banks would put themselves in a more consistent attitude if they would not attempt to obstruct the operation of the law as it now stands pending a final determination of policy by Congress.

The Board holds the further view, however, that if non-member banks be no longer required to remit at par, member banks
248 also should be relieved from such an obligation, for the member banks are supporting the Federal Reserve System and it would be unfair to deprive them of opportunities for profit which are given to non-members. This, of course, raises a question as to the conflict of the interest of the business community and the general public on the one hand, and the banks on the ther. If you should be interested in a further consideration of this phase of the matter, I would suggest that you read the enclosure, which is a copy of a letter which the Board sent a few days ago to a United States Senator in answer to some inquiries made by one of his constituents. Very truly yours, W. P. G. Harding, Governor. Enclosure.

Federal Reserve Board, Washington.

X—1922.
May 7, 1920.

Check Clearings and Collections.

Subject: Letter to House Committee on Banking and Currency Relative to Par Clearing Controversy.

Dear Sir: There is enclosed herewith copy of a letter which the Board addressed on May 5th to the Chairman of the Banking and

Currency Committee of the House of Representatives, from which you will see that the Board takes the position that Congress should settle definitely and finally the controversy regarding par remittances for checks.

The Board has not been advised as to whether the Banking and Currency Committee will adopt the suggestion contained in its letter that the Committee give all interested parties a hearing, but in the event the Committee decides to do so, wide publicity will be given in order that all who desire to be heard may have an opportunity to express their views. It is the Board's view that the Federal Reserve Banks should not participate in the hearing unless the Committee should request the attendance of their representatives. In case the Committee should fix a date for a hearing, Federal Reserve Banks should take steps to inform their member banks and the public. Very truly yours, —— ——, Governor. Enclosure. To Chairmen of all F. R. Banks.

X—1921.
May 5, 1920.

My Dear Mr. Chairman: The Federal Reserve Board desires to invite the attention of your Committee to Senate Document 184, which contains the Board's reply to a Resolution of the Senate of the United States dated January 19, 1920, requesting that the Federal Reserve Board "inform the Senate whether the Board or any Federal Reserve Bank, under instructions or with the consent or knowledge of said Board, has resorted to any method of coercion to compel State banks to join the Federal Reserve System, or by threats or other coercive means has attempted to require such State Banks to submit to any rules or regulations made by the Federal Reserve Board or any Federal Reserve Bank."

This response explains at considerable length the position that has been taken by the Federal Reserve Board and the various Federal Reserve Banks in the matter of the country-wide clearing of checks.

In this communication reference is made to the provisions of Sections 13 and 16 of the Federal Reserve Act and to the opinion of the Attorney General of the United States as to the intent of these sections. The Board believes that it is charged with the duty and responsibility of inaugurating a complete check clearing system throughout the United States, that the Federal Reserve Banks in compliance with the evident purpose of the law and in fairness to all their member banks must exercise their power to receive for collection from those member banks checks upon whomsoever drawn which are payable upon presentation, and the so-called Hardwick Amendment" to Section 13 authorizes both member and non-member banks to make "reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection of payment of checks and drafts and remission therefor by exchange or

otherwise; but no such charges shall be made against the Federal Reserve Banks."

In view of the opinion of the Attorney General, the Federal Reserve Banks do not feel authorized to pay any charges to banks for remitting for checks drawn upon them and sent for collection by the Federal Reserve Banks. While banks are still authorized to charge each other for such service, they are prohibited from charging the Federal Reserve Banks, which are required to receive from member banks at par all checks which are payable upon presentation. Thus it happens that the Federal Reserve Banks find themselves in possession of checks drawn upon non-member banks which they cannot send by mail to the banks upon which they are drawn for the reason that those banks decline to remit at par, and it becomes necessary, therefore, as the law does not provide any penalty upon non-member banks for refusing to remit at par, for the Federal Reserve Banks to provide themselves with some other means of collecting checks drawn upon such non-assenting banks.

251 The Federal Reserve Banks give non-member banks which agree to remit at par the option of paying by check on some convenient banking center or by shipment of currency at the expense of the Federal Reserve Bank. Stamped envelopes are always sent a non-member bank for use in making remittances. Non-member banks are not asked to perform any collection service; they are merely asked to waive personal presentation of checks drawn upon themselves by their own depositors and to pay them by mail remittances without making any charge. In the event that those non-member banks do not agree to remit through the mails at par for checks forwarded to them by the Federal Reserve Banks, the Federal Reserve Banks are obliged, as previously stated, to effect the collection of those checks by the only other means possible, that is, presentation over the counter. The legal right to collect checks in this manner cannot be disputed since it is a right which is inherent in the check itself and which may be exercised by any holder thereof whether an individual, firm or corporation.

There is unquestionably, however, a wide and deep-seated opposition on the part of non-member banks in various sections of the country, and on the part of some member banks as well, to the universal clearing system which the Federal Reserve Board has been endeavoring to establish. Legal proceedings were instituted several weeks ago in the Sixth Federal Reserve District and an injunction was granted restraining the Federal Reserve Bank from collecting checks drawn upon non-member banks through the express companies or by having presentation made by a local agent other than a bank. The United States District Judge has decided this case on all points in favor of the Federal Reserve Bank, but an appeal will be taken to the United States Circuit Court of Appeals and eventually, no doubt, to the Supreme Court of the United States. Pending the appeal the United States District Court will be asked to grant a supersedeas, which if granted will keep in effect the

252 terms of the original injunction.

The Board would respectfully represent to your Committee that it is important, if possible, to have the attitude of Congress

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toward the Federal Reserve par collection system made clear beyond any possible doubt, and it therefore requests that your Committee give all interested parties a hearing, both those who are opposed to the present system and those who favor its continuation and completion, and that after a hearing your Committee adopt one of two definite courses: (1) that it report a bill authorizing both member and non-member banks to make charges against the Federal Reserve Bank as well as against each other for remitting for checks, not to exceed ten cents per one hundred dollars, with the provision that Federal Reserve Banks be authorized to charge to sending banks any exchange charges paid in collecting checks for them, or (2) that it report a bill clearly and definitely establishing the universality of the par remittance system by imposing such conditions or penalties as will insure compliance with the law by all banks of deposit, non-member State banks and private bankers as well as member banks.

The Federal Reserve Board suggests the second alternative only for the reason that it has been contended that the present enactment leaves open some doubt as to the duty of the Federal Reserve Banks to receive checks drawn on non-member banks which are not willing to remit at par, and because it is convinced that a large number of non-member banks will never be reconciled to par remittance as long as Section 13 of the Act remains in its present form.

53 The Peoples Bank of Evergreen, Evergreen, Ala.

June 1st, 1920.

Federal Reserve Bank, Atlanta, Ga.

GENTLEMEN: For several years we have been remitting you at par, for all checks on our bank.

We feel like we are entitled to 1 10 of 1% exchange, and from this time on this will be our rate.

Of course, we will be very glad to have you continue to send them to us, and we will as heretofore give you the very best service possible. Yours very truly, A. Cunningham, Vice-Presdt.

June 2, 1920.

Mr. A. Cunningham, Vice-President the Peoples Bank of Evergreen, Evergreen, Ala.

DEAR MR. CUNNINGHAM: We beg to acknowledge receipt of your favor of the 1st instant, in which you advise you will discontinue remitting to us at par, and that, effective from the date of your letter, you will charge us exchange at the rate of one-tenth of one per cent for all checks drawn on your bank.

We regret very much that you feel it necessary to change the par relations which have existed between your banks and ourselves for the past several years, and we feel that you are making a mistake in so doing. You will no doubt understand that our par lists are issued monthly by the Federal Reserve Board in Washington, and that it is

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254 practically impossible to make changes in the list in any other manner except that provided in the scheme of handling the par list. Therefore, it is impossible for us to notify member banks of this district and other districts of your desire to withdraw from the par list until the next list can be printed and circulated, which will be about July 15th. We request, therefore, that in a spirit of fairness to us, you will continue to remit at par until that date, unless we can, in the meantime, make other arrangements for handling your items, and thus relieve you of the necessity of remitting to us. We would very much prefer, however, to continue to send the items to you, but we can only do that on the present basis, that is, without the payment of exchange by us, as we are not permitted to pay exchange to any bank.

If, after further consideration of the matter, you are still disinclined to continue the present arrangement, we trust you will agree to our request to let it continue until July 15th. Please do us the kindness to advise us promptly upon receipt of this letter as to what your final decision is. Very truly yours, —— ——, Cashier. MWB:G.

The Peoples Bank of Evergreen, Evergreen, Ala.

June 3rd, 1920.

M. H. Bell, Cashier Federal Reserve Bank, Atlanta, Ga.

GENTLEMEN: Referring to your letter of June 2nd, we are remitting at par for your cash letter today, but after this our rate will be 1/10 of 1%, and we would be very glad to receive your business on this basis. Yours very truly, A. Cunningham, Vice-President.

255 June 4, 1920.

Mr. A. Cunningham, Vice-President Peoples Bank of Evergreen, Evergreen, Ala.

DEAR SIR: I have your favor of the 3d instant, replying to my letter of the 2nd instant, and I note that you appear to be unwilling to consider our request that you continue remitting to us at par until we can get the name of your bank off our par list.

As stated in our previous letter, changes in the general par list of all Federal Reserve Banks are made monthly by the Federal Reserve Board. Therefore is is quite impossible for us to notify member banks of the removal of your name from our par list until the next supplement is published on July 1st, and delivered to the banks of this and other districts about July 15th.

We do not know what has prompted you to so suddenly decide to discontinue remitting at par and we feel that even a slight consideration of the matter from the standpoint of fairness would convince you that your desire to terminate the arrangement on one or two days' notice is anything but businesslike or fair. We do not want to be forced by your actions to adopt other means of collecting checks on your bank without the payment of exchange at least until

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July 15th next, as we would very much prefer to continue our present method of handling them until that date. We hesitate also to do anything that would tend to mar the very pleasant relations which have existed between your good bank and ourselves during the past several years, and we trust that for these reasons you will not consider us unduly persistent in endeavoring to enable you to see the matter from our standpoint of view.

We trust you will give the whole matter a little more consideration, and do us the kindness to let us hear from you by return mail. Very truly yours, —— ——, Cashier. MWB/G.

356 The Peoples Bank of Evergreen, Evergreen, Ala.

June 5, 1920.

M. W. Bell, Cashier, Federal Reserve Bank, Atlanta, Ga.

DEAR SIR: Referring to your letter of June 4th, after reconsidering the exchange matter, we will continue to remit you at par for items on our bank until July 15th. Yours very truly, A. Cunningham, V. P.

June 7, 1920.

Mr. A. Cunningham, Vice-President Peoples Bank of Evergreen, Evergreen, Ala.

DEAR MR. CUNNINGHAM: I wish to thank you for your favor of the 5th instant, in which you agree to remit to us at par until July 15, 1920, for items drawn on your good bank. We appreciate this courtesy, and regret indeed that you do not appear to see your way clear to continue remitting to us at par after that date.

In conformity with your wishes, the name of your bank will be withdrawn from our next par list. Very truly yours, —— ——, Cashier. MWB:G.

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IN THE

United States District Court for the Northern District of Georgia.

No. 138. In Equity.

[Title omitted.]

BRIEF OF ORAL TESTIMONY INTRODUCED ON THE TRIAL OF JANUARY 9-14, 1922.

Alex. W. Smith, of Counsel.

258 **Index.**

Page

Accumulation through par list—
- Adelson 68
- Cannon 46

Adams, L. R. 93
Adelson, L. C. 61
Annoying methods—
- Tumlin 2
- Kittles 3
- Wellborn 1

Bennett, W. I. 15
Cannon, J. W. 4
Clearance and collection distinguished 46
Commercial Bank 9
Defendants' witnesses 61
Embarrassing and expensive methods—
- Tumlin 2
- Kittles 3
- Wellborn 1

Greene, W. E., Jr. 6
Kittles, P. R. 3
Monroe, Mark W. 40
Patillo, L. P. 1
Plaintiffs' witnesses 1
Rawles, B. F., Jr. 26
Rebuttal 32
Slattery, J. M. 33
Stover, W. J. 1
Strickland, E. S. 11
Tidwell, E. V. 48
Tumlin, A. M. 27
Wellborn, M. B. 1

IN THE

United States District Court for the Northern District of Georgia.

No. 138. In Equity.

[Title omitted.]

BRIEF OF ORAL TESTIMONY INTRODUCED ON THE TRIAL OF JANUARY 9-14, 1922.

Plaintiffs' Oral Evidence.

L. P. PATTILLO.

President of Bank of Buford since it was organized. I am familiar with the so-called par-clearance campaign in this district. I had a conversation with Mr. J. A. McCord before the circular letter of December 23, 1919, was sent out by the Federal Reserve Bank of Atlanta to non-members. It was at Bremen, Ga. We were waiting for the train and the crowd was standing around the depot, and in the crowd was Mr. McCord, of the Federal Reserve Bank. They were talking, and in the conversation somebody asked me if I had ever joined the Federal Reserve Bank, and I told them I had not. Mr. McCord put his finger out at me that way (indicating, pointing his finger) and said, "You will join." I rather think there had been discussion of the par-clearance question.

After that we got the memorable circular letter. They said it was their purpose to enforce it. That they were going to adopt the plan set out in this circular letter; if they couldn't do it one way the idea was to do it another; if they couldn't do it by some way, they would force us. That is the way I understood it. I think Mr. Wellborn was with us. As a result of that effort to have an understanding with the Federal Reserve Bank, we got no satisfaction. They seemed to persist in carrying out the plans; that was their idea. They seemed to be getting ready for it all the time.

W. J. STOVER.

Cashier of the bank of Cassville. Its capital stock is fifteen thousand dollars. We have two hundred and fifty dollars surplus. Been in business since 1913. That bank charges exchange for remittances of proceeds of checks on parties who do not live in Cassville. The amount of revenues from these exchange charges was $332.61 in 1919. The bank ran at a loss of $183.37 that year. The receipts derived from exchange during the next year were $302.74 and the net earnings were $977.84. Revenue from exchange in 1921 was $105.00 and net earnings $201.48.

The population of the town where this bank is located is two or

three hundred. There is no other bank there. Our depositors, as a general rule, live in the county. There are some stores that are depositors. I usually carry from fifteen hundred to three thousand dollars in cash in the vault. The deposits for the past year have been from twenty-five to thirty thousand dollars.

261 Cross-examination:

I constitute the entire clerical force of the bank. My salary is one hundred and ten dollars a month. I charge one-eighth of 1 per cent on checks for the most part drawn on the bank by depositors and received through the mail from other banks. Such checks are charged immediately to depositors' accounts in full.

If a check is drawn by Mr. A for one hundred dollars, and it goes through the Fourth National Bank of Atlanta, I charge Mr. A's account with one hundred dollars and remit the Fourth National Bank in New York exchange less one-eighth of 1 per cent. I do that in each and every instance where I carry out that plan.

I have no agreement with any depositors that I will pay their checks without exchange. The New York bank pays interest at the rate of 2½ per cent per annum, provided I keep a balance there of a required amount. I draw checks on that bank in payment of these checks received through the mail for collection. I send to New York, to keep my balance built up, checks of the First National Bank of Chattanooga. I ask them to remit their check for my account. I do not send New York currency. In the process I receive one-eighth of 1 per cent as a direct exchange charge and receive 2½ per cent per annum on the balance in New York. If I did not have this New York bank or the privilege of deducting exchange, it would not cost any more to run my bank, in the way of clerical help. I could still do all the work there, I suppose.

I do not charge for the collection of notes of customers they leave with me for collection. When a bill of lading comes in with a draft attached I charge exchange unless it is drawn without exchange. I charge exchange on checks, and where a bill of lading comes in with draft attached I charge exchange, but it is a very small amount we receive from other items, other than charges on clearing letters.

262 The amount of checks paid daily over the counter of my bank would average, I should say, five hundred dollars. The amount remitted through the mails daily varies from one hundred dollars some days to two or three thousand. The approximate average is, I would say, four or five hundred dollars; something like that. Some days we pay more through the mail than over the counter and some days more over the counter. On the average it is about fifty-fifty, I should think.

Redirect examination:

My answers as to the averages are mere estimates.

Q. How else did you pay a check except with currency?

A. Well, if it is paid and placed to another man's credit—if a man

me into the bank and deposited it, I would consider that paid, paid far as he is concerned, and placed to the other man's credit.

Q. That is debiting one man and crediting the other?

A. Yes, sir.

Q. How much on the average—pursuing the same line—how uch on the average are you called on to pay out in currency over e counter in cash?

A. Each day?

Q. Yes, how would that run?

A. That is a small amount; I would say on the average not over hundred dollars a day.

Q. How does that compare with the amount of currency received for deposit?

A. Well, I receive more currency in than I pay out.

Q. On the average?

A. Yes, sir.

I did not include in the figures I gave as to revenues on exchange ything for interest paid by our New York correspondent on bal- nces. I received that interest in addition to exchange charges. I only received that interest if I maintained a balance of a cer- 38 tain amount. The amount of currency I would have to carry in vault would be gauged by the maximum amount kely to be called for. The maximum amount is two thousand llars, taking one day with another. It hardly ever runs over that mount.

If I could not remit in New York exchange it would be necessary carry the currency to that amount, and we would have to keep e money out of New York and keep it in the bank. That would sult in the loss of interest on our balance in New York. That ould necessarily mean that we would have to keep the balance with e correspondent banks, and a larger amount of money in the bank, hich would hold a large per cent of what money we had there and e could not loan it. It would take off the interest on that amount f money; we would lose that entirely.

Recross-examination:

My correspondent at Chattanooga, upon request, remitted to the ew York bank as per directions and at their expense. The bank has o correspondents, the First National Bank of Chattanooga and the anover National Bank of New York. Our average balance would epend on the time of year. I should say from $1,500 to $2,000 in hattanooga, on the average, and in the two banks all the time about 000. We can't lend that out, but we are getting interest on it, and can be reduced. But if reduced below a certain amount it would ak down the machinery for exchange; if we checked out what we ad in there, it would do that. If we were furnished currency free f charge by the Federal Reserve bank and had two days to remit for ose checks of our depositors received through the mail, it would t affect our lending capacity in our neighborhood. It looks to me ke the Federal Reserve bank wouldn't furnish any currency unless ey had something for it.

Q. Assuming they would, like they said they would?
A. If they furnished currency and not hold anything on o
part—but they won't do that.
264 Q. But so far as your lending capacity is concerned,
would not be impaired any more than at the present time?
A. The way you put your question it would be the same as thi
If some one man had the money in his pocket and would come
and turn it over to the bank to take care of its clearings, then
wouldn't affect us.
Q. You would not be affected?
A. No, sir.
Q. That is what I asked you; I am talking about your capacit
to lend money to your depositors; if you had free currency furnishe
you to take care of your checks through the mail, in lieu of yo
present balances, your capacity to accommodate borrowers would no
be affected any more than at the present?
A. I don't see how you are going to furnish cash without gettin
something for it.

Redirect examination:

I know of no bank that furnishes another currency without some
thing to take its place. I never heard of one. Three per cent in
terest is allowed on balances in Chattanooga.

W. E. Greene, Jr.

I am cashier of the Farmers & Merchants Bank, Junction Cit
Georgia; paid in capital, $15,000; surplus, $8,500; average deposit
$30,000. Our fiscal year ends March 31 every year. For 1921 ou
earnings from exchange were $733.23; gross earnings, $6,644.80
expenses, $4,021.40; that is as to the last fiscal year. For the ye
preceding that, to March 31, 1920, the gross earnings were $7,51
the net earnings, $3,030.95; earnings from exchange were $858.80
expenses were $3,697.78. For the year preceding that, endin
March 31, 1919, gross earnings were $5,039.38; expenses were $2
789.38, net earnings, $2,350; exchange, $731.05. Exchange earning
are included in all of these figures, in the gross and the net.

265 Cross-examination:

In these items carried as exchange we did not separate exchan
on checks from the other items. I can tell you approximately wh
it is. Outside of the exchange on cash letters, each year, that
have referred to, won't amount to over $50 a year, on the averag
We have very few drafts and papers of that kind for collection, ou
side of cash letters. I usually get three letters a day—two fro
Macon and one from Atlanta—and I remit for Atlanta letters i
Atlanta exchange, and on Macon by Macon exchange. We carry tw
accounts, one in each place. We have no New York account no
an account in Savannah. No account outside of Atlanta and Macon
We build up those two accounts with foreign checks deposited wit

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checks received by our depositors on other banks. Checks we eive in letters daily are checks drawn by our depositors on their counts. Our exchange charge is one-eighth of 1 per cent on the al on each letter. The banks in Macon and Atlanta allow on our posits 3 per cent if I keep enough with them to warrant it; it ems that I haven't had a sufficient balance recently. The average ck I have to send them daily to take care of incoming and going items on each bank is between fifteen hundred and two usand dollars on both banks, nearer fifteen hundred, maybe. I erage two thousand dollars balance in Atlanta and eight thousand llars in Macon, and have in those two banks all the time about ten usand dollars.

When I send them items for credit they do not charge one-eighth 1 per cent, and that is the reason I keep all that money there—e reason. I charge them for checks they send me. They do not arge me anything directly; they do indirectly. They have my ney there; they have the use of that. They don't pay for that ently, in fact, last December one bank charged me twenty some ll dollars. I didn't have the required amount there. They collect my checks level. I charge them one eighth of 1 per cent. They do not keep any balance with me, though. I have an idea what channel those two banks in Atlanta and Macon e to collect checks I send them daily; they use the same methods collecting that they do with others—through the Federal Reserve nk.

I don't know that I can say that; I couldn't answer that; I am there in the bank; I don't know what they do with them. I uld say we pay out in currency fifteen hundred dollars a week—o hundred and fifty dollars a day. I could not say how much in lit. There are no other banks in Junction City. The population about 350 people. We average about $50,000 in loans; something e two thousand or twenty five hundred dollars in currency; capital, 5,000, paid in. We have to carry 15 per cent of our demand de-sits; 5 per cent of time deposits; daily letters are about two thou-nd dollars, in checks received by other banks, drawn by our de-sitors and sent to other people.

We handle over the counter locally daily about $250 in currency. the proportion of checks used of depositors, sent to out-of-town wns, to those cashed by local people is about eight to one. We ow that when we take the deposits; that has been true ever since e bank opened; practically the same figures.

Of course, we do not charge them this one-eighth of 1 per cent ex-nge. That we charge to Atlanta and Macon. They absorb that consideration of our business. That is net to us. The business es us postage on letters to Atlanta or Macon, and this reserve I ep with them; they have got the use of that money. Sometimes get 3 per cent for that; sometimes I don't. It was net when I d get it. I did not pay any part of their overhead expenses and so , but they did not lose anything on it; if they did, they wouldn't ep it.

The balance in Atlanta and Macon is a float balance, and that one reason they don't pay any interest on it; that is the main reason. If it was immediately available I would get interest.

267 Redirect examination:

The way I got at the figures I used a few minutes ago I have the average shipments a thousand dollars in currency a week, and if you pay out two thousand, then you have one thousand coming in, so our receipts of currency are not equal to the amount paid out. If I had to pay all currency on these checks, I believe I would have to keep at least five thousand dollars in currency, or possibly more, possibly six thousand dollars; I will say six thousand dollars in currency. Our receipts are less than two hundred and fifty dollars a day, on the average?

By the Court: Mr. Witness, suppose the holder of a draft or check living out of your town should send you the check directly for collection, how would you remit?

Witness: Send him Macon or Atlanta exchange.

By the Court: And charge him the full exchange rate?

Witness: One-eighth of 1 per cent.

By the Court: Then suppose he had to pay one-eighth of 1 per cent to collect it again, to collect your paper?

Witness: That would depend on what kind of account he kept with the bank.

By the Court: Suppose he has no deposit—just a farmer and has no deposit at any bank?

Witness: I don't believe that has ever happened.

The Court: I am asking you if it did happen, you would send him Macon or Atlanta exchange?

Witness: The only way I ever get a check from an individual wanting money, they usually ask for currency; I send them currency and charge them postage, deduct the fee for postage.

By the Court: And you get nothing out of that then?

Witness: No, sir.

Q. You do not charge exchange when you send them the currency?

268 A. That happens so seldom.

Q. Do you charge them one-eighth of 1 per cent?

A. No, sir. I charge them—say, for instance, a man sent a check for $25 and wanted currency; I charge him, say, fifteen cents—two cents to mail the letter and ten cents registry fee—which would leave three cents; you can call that exchange if you want to.

Q. When you say you pay checks by exchange on Atlanta or Macon, state whether or not that is intended to be at par; if not, whether any other form of remittance would be made by you?

A. Say I sent the Atlanta clearing-house a draft or cash letter, can they collect the draft I send them at par?

Q. Yes, sir.

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A. They can; if I send them a draft on Macon I only charge them one tenth of 1 per cent.
Q. Why?
A. Because it would take them that to collect from Macon.
Q. To cover the collection from Atlanta to Macon?
A. Yes, sir.
Q. Your purpose is to give a draft in payment of these letters payable at par where drawn?
A. Yes, sir.
Q. That is your purpose?
A. Yes, sir.

Recross-examination:

I deduct one-eighth of 1 per cent just the same and give them nothing they can step around the corner and get the cash on.

Redirect examination:

We have no wants or demands that they could not handle, either through Atlanta or Macon. It is not incumbent on us to open an account in New York. Practically every concern that we would get a draft from was willing to take Atlanta exchange; since the Federal Reserve system we just didn't need a New York account, because the Federal Reserve was located in Atlanta.

Recross-examination:

The other banks cleared throught it. Some times they would want New York or Chicago exchange. My bank is one of the plaintiffs in this case.

E. S. STRICKLAND.

I am president of the Alma State Bank, Alma, Georgia. The capital of our bank is twenty-five thousand; fifteen thousand paid in, very little surplus. Have been in business not quite three years. Our receipts from exchange during the year 1919 were $543.13; gross earnings for that year, $9,395.82; expenses, $9,049.13. The amount stated as exchange receipts is included in the gross earnings. For 1920 our gross earnings were $9,838.91; the amount of exchange, $595.49; expenses, $7,540.10. The figures, as far as I have them, for 1921, nine months, are: Gross earnings, $11,604.38; exchange, $852.47; expenses, $11,348.58.

Cross-examination:

Alma State Bank is not a party plaintiff. Our average deposits in 1919 were about eighty-five thousand dollars. They were about the same in 1920, and the last nine months I think the last statement showed about $64,000. Our loans average for 1919, 1920, and 1921 about eighty thousand dollars. We have two people in our bank, the cashier and bookkeeper. I am the president, at a

LOSE IN CENTER

salary of twenty-five dollars a month. We pay our cashier $1
a month and our bookkeeper $75 a month. That is $3,000 a ye
for salaries.

The bank does not own its own building; it pays $30 a mon
rent. I own the building and rent it to the bank. Tot
270 of $3,360 overhead expense and about $8,000 besides salari
We have been doing a lot of advertising, but not eight tho
sand dollars' worth of advertising; that's all the expense. W
haven't got a lot of bad debts charged in on expense; nothin
charged off in the three years.

Q. You do not mean to say that you run the Alma State Ba
at an overhead expense of $3,360 and an incidental expense
$8,000, or very nearly two and a half times as much; haven't yo
got that wrong. Aren't you mistaken, unintentionally?

A. The expense is just like I called it out here.

Q. How do you get these figures?

A. That is all the expense; the whole expense of running th
bank; the gross expense.

Q. That is what I am getting at. What is that $8,000 ma
up of? That is $650 a month over and above the salaries. Do
it cost you that much incidental expense down there; if so, what a
the items?

A. I don't know sir.

Q. Did you get those figures off the book yourself?

A. Yes, sir; I did not take down the articles, I just taken dow
the round figures.

Q. Didn't the bookkeeper give that to you?

A. No, sir.

Q. You made it yourself?

A. I got it myself.

Q. Did you make it yourself?

A. Yes, sir.

Q. What correspondent banks have you got and in what citi
are they?

A. The Atlantic National Bank of Jacksonville; the Brunswi
Bank and Trust Company.

Q. What other bank?

A. The Citizens & Southern of Atlanta. We carry a New Yor
account. I forget now which bank. We carry very little at Brun
wick; I couldn't tell you how much at Jacksonville; som
271 days we have a big account there and some days practicall
none. I don't know what those four accounts average dail
They are supposed to pay interest on those balances, but they ha
us charged up with two hundred and some odd dollars at the end
this year at Jacksonville; that is our clearing-house. They charg
us for collections. We pay them a little every year. We do no
carry what those banks consider is a sufficient deposit all the time
and they charge you for collection on your checks all the time
The only way to get around that is to carry enough assets in th
bank, in the shape of a deposit, to prevent them charging us. I

COPY BOUND CLOS

it had not been for the exchange, we would come out behind each year. What they charge us for is on drafts. We get a draft on Pittsburgh, or somewhere, and send it to them for collection and they charge for that.

Q. All right, you say if it hadn't been for the exchange you receive you would come out behind? Suppose you reduced your expenses 50% you would come out ahead?

A. Yes, sir.

Q. So, whether you come out behind or ahead is not dependent on what you get from exchange solely, is it.

A. I don't know how we would manage if we didn't get that.

Q. May be not, but that is nevertheless true, isn't it? I am not trying to trip you; I am not a banker and you are.

A. I am not a good one, I am a green one.

Q. Well, if you had to pay those correspondent banks for items sent them for collection, and that offset what you received, it would be a level transaction; that is obvious isn't it? May be I can get at it in another way; did you deduct from exchange the amounts you paid for collections?

A. Did we deduct?

Q. Yes, sir; you say the Jacksonville clearing-house charged you something; did you deduct that?

A. No, sir.

Q. You did not?

272 A. No, sir.

Q. That is carried in this expense of $11,000?

A. I guess so.

Q. The whole of that eight thousand dollars may be that?

A. No, sir; that is all the expense.

Q. How did you build up your balances in these corresponding banks?

A. Sent them all out-of-town checks.

Q. Checks that you received from your depositors daily?

A. Yes, sir.

Q. You sent them to your various correspondent banks?

A. Yes, sir.

Q. Bundled them up in a letter and sent them daily?

Q. And they are supposed to credit you the full amount daily at par?

A. Yes, sir.

Q. And if they are drawn on distant points—New York or Baltimore, say—they stand that expense?

A. Yes, sir.

Q. That does not cost you anything?

A. Yes, sir; something every year.

Q. It did not the year before?

A. Yes, sir; I think every year.

Q. What was the postage on daily letters?

A. I can't say what the expense was.

LOSE IN CENTER

Q. You didn't have to employ any other clerks—it didn't add to your expense?

A. Yes, sir; we are paying our cashier more last year than we did the year before.

Q. What did you pay him the year before?

A. Only $100; the first year we paid him $100, but the next year everything went up so high we went up $50.

Q. And you propose to pay him even more yet if the business justifies it?

A. No; I think we are going to cut this year.

273 Redirect examination:

Our bank has to pay taxes and interest, and those items are included in that expense account. Some of them are pretty large. I know of no item of expense that I could fairly avoid in the conduct of the business of that bank. We are trying to cut out all the expense we can. We have made all the cuts we can.

W. I. Bennett.

Cashier of the Bank of Trion, Trion, Georgia, since December, 1912. Our capital stock, paid in, is twenty-five thousand dollars; ten thousand dollars surplus and more than ten thousand dollars undividend profits. Average deposits for the past twelve months, about one hundred to one hundred and ten thousand dollars. Back of that it ran as high as $180,000 as a maximum figure one time. We had three or four very hard years. The year 1913, the exchange receipts were $164.37; the expense account was $1,162.91; the net earnings were $2,492.89, without a dividend being paid.

For the year 1914, interest and discount was $3,566.42; exchange was $391.11, less expenses of $1,073.70; the net earnings were $2,883.84, without a dividend being paid.

The year 1915 interest and discount were $2,442.21; exchange was $301.04, less expenses of $1,252.45; the net earnings were $1,491.80.

During the year 1916 interest and discount, $4,306.72; exchange was $588.78, less expenses of $2,227.29; the net earnings were $2,667.51.

In 1917 interest and discount, $7,428.92; exchange was $837.63, less expenses of $3,264.55; the net earnings were $5,002.00.

1918, interest and discount, $7,439.09; exchange, $1,520.41, less expenses of $4,207.40; less furniture and fixture depreciation, $117.37; net earnings, $4,634.73.

274 1919, interest and discount, $10,463.20; exchange, $1,311.50, less expenses of $4,847.83; less furniture and fixture depreciation, $223.00; the net earnings, $6,703.87.

1920, interest and discount, $14,895.68; exchange, $1,521.98, less expenses, $6,934.77; less furniture and fixture depreciation, $272.21; the net earnings were $9,210.68.

For 1921 interest and discount, $11,684 63; exchange, $1,092.81, less expenses, $8,983.73; less furniture and fixture depreciation,

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$249.49; less worthless accounts charged to profit and loss, $209.04; earnings, $3,135.18.

This makes total earnings for the period of $38,222.50, of which amount $7,729.63 was exchange; or, 20 22/100% of our earnings for the nine-year period was exchange.

Cross-examination:

That includes exchange received from remitting checks and ordinary commercial items and bills of lading and drafts. Our bank has a capital of twenty-five thousand dollars. The officers are Mr. B. D. Logan, president; C. P. Caperton, vice-president; I am the cashier and Mr. W. R. Williams, assistant cashier. They are all connected with the cotton mills there, except Mr. Williams. That has been true since the bank was organized. No part of the capital stock of this bank belongs to the cotton mill. The money was separately contributed by these gentlemen. Each of them is a large stockholder and officer. I am not a stockholder in it; Mr. Caperton is assistant secretary and treasurer, and was when the bank was organized. The cotton mill handled its transactions by keeping a man employed to look after their cash; it took an additional man to take care of it, and when we tried to get them to increase their balance with us they said it was satisfactory as they managed it. Mr. Caperton, the vice-president and assistant treasurer of the mill, gave positive instructions that the cotton mill's deposit should not exceed twenty-five thousand dollars; recently it was four thousand and a few dollars.

275 Q. How did the cotton mill pay off drafts on it with bills of lading attached for deliveries of cotton; how did they handle that prior to the organization of the bank?

A. I was not with them then.

Q. Didn't it come through Rome?

A. Quite a bit of it does now, the Hall (?) Cotton Company, a relative of Mr. Caperton, do business there, and they take New York checks, and clear through our bank.

Q. And you can't tell the court how much of this exchange carried on your books was derived from exchange deducted in payment of bills of lading?

A. In actual dollars and cents I cannot, but we don't get a great deal of railroad cotton through Trion; they get a good portion from Walker County.

Q. The most of your exchange comes through commercial items?

A. Checks?

Q. Commercial items—drafts?

A. No, sir; checks are two-thirds of them or more.

Q. Are you sure of that?

A. I think I can prove it from the books.

Q. How much cotton do the mills buy in dollars?

A. I don't know, sir.

Q. How big is the mill?

A. Sixty thousand spindles.

LOSE IN CENTER

Q. How many bales would they handle?
A. I expect ten or twelve thousand.
Q. They buy all of that?
A. Yes, sir; but not on drafts.
Q. They pay for it finally though?
A. They have hauled cotton for the past six months from Alabama in trucks.
Q. Well, don't they pay for it with a check on your bank—to Hall & Company—and when it comes back you charge one-eighth of one per cent exchange?

A. No, sir; a lot of times we don't charge anything; we
276 do business with the First National Bank of Chattanooga; they don't charge us and I don't charge them.

Q. If they charged you, you would charge them?
A. That is guess work.
Q. The other way about isn't guess work?
A. No, sir.
Q. Why do you do that?
A. Because we feel it is good business for us.
Q. Don't you do it because that way don't cost you anything?
A. I can't say that; because we often call on them, once or twice we had to have currency and they sent it to us; sent an automobile through the country for currency and got ten thousand dollars in cash.
Q. Isn't it true that the cotton mills organized this bank as a facility to take care of drafts?
A. No, sir; if it is Mr. Logan (?) misrepresented it to me; I asked him that question; I asked him why he wanted a bank at Trion, and he said——
Q. I didn't ask you that—I want your opinion about it?
A. I haven't any opinion about that; the banking business is a profitable business, that was my reason.
Q. The bank officers and the cotton mill officers are the same?
A. Mr. Williams is not connected with it; neither am I an officer.
Q. Does the bank supply the cotton mill with cash for its pay roll?
A. Yes, sir.
Q. It does that?
A. Yes, sir.
Q. It is a fact that a great number of drafts do come in through your bank drawn on the cotton mill?
A. The number is small compared with the other drafts we handle.

Q. You handle a great many drafts during the year?
277 A. Yes, sir.
Q. You charge exchange on them?
A. No, sir.
Q. You do not?
A. No, sir.
Q. You just don't charge anybody unless they draw a check on your bank?

A. Sometimes a draft is received with exchange, and we do, yes, sir; we have drafts all over the east and the west.

Q. Isn't it true you do charge exchange on drafts, without so much technicality; that is a fact, isn't it?

A. Some we do and some we don't.

Q. What do you mean by that? If it says no exchange?

A. Well, a goodly number are drawn with exchange, and some are drawn without exchange.

Q. Then you collect for the other fellow?

A. We remit him on the First National Bank of Chattanooga —reciprocal business.

Q. How much do they annually draw on you in payment of cotton?

A. We pay their cotton tickets; the buyer issues a ticket at the warehouse to the seller, and we pay the ticket across the counter.

Q. That is local cotton, raised in that county?

A. Yes, sir.

Q. What county?

A. Chattooga and Walker.

Q. That is when they buy cotton that comes in from Walker and Chattooga counties.

A. Yes, sir.

Q. And pay with tickets?

A. Yes, sir.

Q. I am talking about cotton they buy from Hall (?) & Company?

A. I don't know how much they buy, or whether they buy any unless I happen to see the checks.

278 Q. Where do you carry your bank balances?

A. New York.

Q. Any other place?

A. Chattanooga.

Q. Any other place?

A. We have one in Rome, we don't use it.

Q. Have you one in Atlanta?

A. No, sir.

Q. What is your New York bank?

A. The Hanover.

Q. How much balance do you have in the Hanover?

A. Fifteen thousand dollars would be a fair average.

Q. How much do you keep in Capt. Lowry's Bank?

A. Ten or fifteen thousand dollars would be fair.

Q. Ten or fifteen thousand dollars at Chattanooga and fifteen thousand with New York?

A. Yes, sir.

Q. The funds kept deposited by your bank there?

A. Yes, sir.

Q. To take care of checks you send other banks?

A. Yes, sir.

Q. How do you build up these balances?

A. The Chattanooga account with checks across the counter and checks on New York.

Q. Checks by your depositors on other points?
A. Yes, sir.
Q. You bundle them up and send to one of the banks?
A. No, sir; to Chattanooga direct; New York I send them.
Q. Do they pay you any interest?
A. Three per cent in Chattanooga, and 2½ in New York.
Q. How much exchange do you deduct?
A. One-tenth of 1 per cent.
Q. Do they charge you exchange on your items sent them?
A. Chattanooga by agreement does not.
Q. How about New York?
A. We don't send anything on New York except on themselves.

279 Q. So they collect for you without charge, but when you get items from them you charge one-tenth of 1 per cent?
A. By agreement we do not.
Q. They collect your items on other points in the country without exchange?
A. Yes, sir.
Q. And when you receive checks from them?
A. We treat with them at par.
Q. You give them credit at par?
A. Yes, sir.
Q. Where does your exchange come in?
A. We don't get any from them.
Q. Where do you get it from?
A. From the Atlanta Clearing House, Fourth National Bank, Macon, the Citizens & Southern, the Drovers National of Chicago.
Q. You use the Chattanooga bank for what—foreign collections?
A. Yes, sir.
Q. They don't charge you anything?
A. No, sir.
Q. And when they come to you through Chattanooga you don't charge?
A. No, sir.
Q. By agreement you collect for them at par?
A. Yes, sir; by agreement.
Q. If it comes in from another bank you charge one-tenth of 1 per cent?
A. From the Atlanta Clearing House, yes, sir; we don't charge the Hanover, they don't charge us.
Q. Those are checks drawn by your depositors on your bank and sent to Tom, Dick and Harry outside of Trion?
A. Yes, sir.
Q. On your bank?
A. Yes, sir.

Q. How do you pay the Atlanta Clearing House?

280 A. New York Exchange; they kick when I send them Chattanooga.
Q. Kick?
A. Yes, sir, it costs them something—I don't know what; they complain though.

Q. That is the clearing-house?
A. Yes, sir.
Q. They don't tell you why?
A. They tell us not to do it any more, that is all they tell us.
Q. You send them a check on New York?
A. Yes, sir: we take a chance every once and a while and send them one on Chattanooga.
Q. This deposit of eighty-five thousand dollars, how many depositors have you? You said twenty-five thousand dollars of it was represented by the account in favor of the cotton mill?
A. Active accounts?
Q. Yes, have you any very large accounts?
A. No, sir.
Q. Don't these officers keep large accounts with you?
A. No, sir.
Q. Are you speaking of the time before the Trion Manufacturing Co. failed or since?
A. It failed in 1911, and they took possession in 1912, and the bank did not begin until December, 1912, several months after.
Q. Are these gentlemen Walker County citizens?
A. From all over the United States.
Q. Where are you from?
A. Albany, Georgia.
Q. The Trion Mills failed in 1911?
A. Yes, sir.
Q. And it was reorganized by these gentlemen——
A. About 1912.
Q. It got out of court in 1913, didn't it?
A. It got out of court, and they took possession in September, 1912, I think.
Q. And right after they took charge the bank was organized?
A. The charter was granted in October, I think, after that.
Q. Up to that time it belonged to the Fuller (?) and Holmes family?
A. And the Hamilton and —— family.
Q. They did their business through Chattanooga and Rome?
A. Just up to a little while ago that was the only bank in the county; the bank at Menlo and Trion are new banks; the Trion Mfg. Co. began business in 1845.
Q. Do you charge your depositors anything for collecting checks?
A. No, sir.
Q. You give the credit at par?
A. Yes, sir.
Q. And when a fellow comes in there with a check and wants the cash you give it to him?
A. What sort of a fellow?
Q. You would do that for a negro wouldn't you?
A. Yes, sir, if he was a depositor, some fellows come in when you draw a draft to cashier; we won't do that; Mr. McCord told me that was bad business.

Q. But you let him have the amount of the check, level, if it is a hundred dollars, you give him a hundred?

A. Yes, sir.

Q. If he owes Hollins Randolph one hundred dollars in Atlanta and sends him a check for it, you charge Atlanta Clearing House one-tenth of 1 per cent, although if he presented the $100 check in person, you would not charge him anything for it?

A. No, sir.

Q. That is correct?

282 A. Yes, sir; we feel like the man he sent the check to ought to be as good business man as our depositors and pay it.

Q. You think I should pay it?

A. No, sir, but your bank balance should warrant the bank doing it for nothing.

Q. You think then I ought to take one-tenth of 1 per cent less because I live in Atlanta?

A. Yes, sir—as margin cost—treat it as part of our expense—the merchant pays it and it is added as cost.

Q. In the face of the fact if you paid him with a check on Chattanooga it wouldn't cost you anything?

A. Yes, sir.

Q. That is right?

A. The wholesale merchant pays it; the manufacturer pays it; it is all added as expense.

Q. One-tenth of 1 per cent is ultimately borne by the merchant?

A. Borne by the consumer ultimately; they add them to take care of the expense in handling it.

Q. Mr. Bennett, I notice your deposits have held pretty level up there even last year?

A. Yes, sir, fairly good.

Q. You just about run that bank by yourself, with a bookkeeper?

A. Yes, sir, we have got some directors there, local directors.

Q. You don't pay them anything?

A. No, sir.

Q. You don't pay the president?

A. No, sir.

Q. Do you own your own bank quarters?

A. No, sir.

Q. The cotton mill owns them?

A. Yes, sir.

283 Redirect examination.

By Mr. Smith:

Q. You pay reasonable rent for it?

A. We handle the local cotton, and take care of all local cotton for the rent account.

Q. They get value received?

A. Yes, sir; reciprocal business.

COPY BOUND CLOS

Q. You say it does not cost you anything to draw checks on Chattanooga and New York; do you mean that literally?
A. No, sir, we have to keep a balance there to take care of it.
Q. Is it a profitable thing to let your money out at 3 per cent, compared with what you get in your own territory?
A. We get 8 per cent in our territory, but our reserves we keep there.
Q. And the Chattanooga bank agrees to do that service in consideration of the value of your deposit?
A. Yes, sir.
Q. That is the true consideration?
A. Yes, sir.
Q. The true consideration of collecting their check and they yours?
A. Yes, sir.
Q. If you send $100 to Mr. Randolph, you don't get anything, if your bank sends $100 to Mr. Randolph on a fee, you don't get anything?
A. We are sending a check for $100; it comes back through the Atlanta Clearing House to collect and the charge is one-tenth of 1 per cent.
Q. Is the charge for paying the check or for sending the money to Atlanta?
A. It is for getting the money where they can use it when they want it.

Q. When you give credit to your depositors for checks 154 drawn away, is that credit given at the time, or do you defer it until the check is collected?
A. The day we get the check if we are satisfied; if we are doubtful we take it for collection.
Q. If you are satisfied that the endorsement is good, you immediately credit it?
A. Yes, sir.
Q. Although you may not get it for several days, until you can send it off and get the money back?
A. Yes, sir.

B. F. Rawles, Jr.

I am a banker at Colquitt, Ga., below Macon; our capital stock is twenty-five thousand dollars. Colquitt Exchange Bank. Surplus and undivided profits very small. Have been in business since 1917; a new bank with average deposits about forty-five thousand dollars now. The receipts of our bank from exchange during the year 1921 were a little less than $250; I think $242 and a few cents; net earnings, $1,100 and something. Receipts from exchanges during the preceding year, somewhere about fifty or sixty dollars. I didn't have any cash letters then from any clearing house; they all came through the other bank in the same town, the first and second year of our existence; you see when the bank was organized the stockholders in the First National Bank were the same as in the

Exchange Bank, and all the cash letters come through the F
National Bank; didn't do any collection until the first of this y
carry our correspondents' accounts in Bainbridge, Atlanta, and
York. We receive no interest on balances from our correspond
lately; we are supposed to; we haven't carried a sufficient bal
with none of them except Bainbridge; haven't been able to build
a sufficient balance?

I am the only employee in our bank. Our earnings from
change were about $242.00 out of a total net earning of $1,10

No cross-examination.

285 ALBERT M. TUMLIN.

Cave Springs, Ga.; I am president of the Bank of Cave Spri
four years or five; I have been on the finance committee and
director ever since it was organized in 1905. It is a State bank
now a member of the Federal Reserve system. It joined eit
November or December; I think it was admitted just about Dec
ber, December, 1919; admitted in December, 1919. The last of
year 1919. The matter of joining had been under discussion off
on; I had known Mr. Wellborn for years; I met him at the bank
meeting and he mentioned it to me and thought it was a good thi
The main thing that bothered us was par clearance. I talked w
Mr. Wellborn in the summer before I think. Just before we w
in we increased the capital stock to twenty-five thousand dollars
twenty-five thousand surplus. The capital prior to that was fif
thousand dollars and the surplus went on up to about eight or
thousand.

We knew we would have to increase our stock to become a m
ber and the par clearance question was becoming so pressing t
it looked like we had to do something. I owned about eighty
of one hundred and fifty shares of the stock and some parties th
like everything else, what one man controls they like for you
to control, and they said they wanted to start another bank. I
not want another bank started, and I said we will sell you gentlem
any amount of stock you want, which means to reduce my st
and increase the capital and put the surplus up. I went from eig
shares out of the one hundred and fifty to sixty shares out of
hundred and fifty. I had a conversation with Mr. McCord as to
intention and purpose of the Federal Reserve bank just before
joined. Mr. McCord's relation to the Federal Reserve bank, I un
stand, is agent—a Government agent; the agent that looks a
these matters. He is chairman of the board. I had th
286 conversation in his office in Atlanta. I think that was
most important one. We had talked at different times. T
time—I had been appointed to fight par clearance; I had been
pointed one of a committee of seven and I had several banker frien
on it, and it looked like we were going to be forced in from wh
Mr. McCord said, and what he did. He said they were going to p
on the par clearance campaign and it would be put over and

ld have to go to par clearance; that they were going to force it ugh, and go to collecting at the counter and I said that would any bank you know—they could not carry enough money, the Spring Bank or any other bank to do it—and he said I know He concurred in that statement and said he knew we could not. I agreed with him. That is the reason I joined; that is not all reasons, but the greatest reason; our greatest loss was on the ques- of exchange. Our average revenues from exchange were nine dred dollars—about. As to keeping a deposit in the Federal rve bank of an amount sufficient to meet all items in float, the test trouble is deferred credit. After we went into the Federal rve, it was one of our greatest troubles.

There we have to give a customer credit say for five thousand rs, we have to give him credit today, and he can draw a check diately and send it to Atlanta, and get the use of his deposit, we have to send the check for collection, and it will take us e days; say this is the tenth, and it comes in here this evening, ll be the thirteenth before we get the credit; it takes two days to get from here to Cave Springs by train; you can go to Rome ight, but if you miss connection, it does not come until the next And in the meantime, we have to advance the money; or if ves us he takes credit on the note immediately. That process ing business affected the amount of reserves we have to carry; estimate is that it doubled it, but I think it trebled it. It also affected the amount of money available for loans that much more of course. As to why they were conducting the par clearance campaign, Mr. McCord talked very freely, and we come to the same conclusion about the matter. He said they going to put it on; that all the rest of the districts had, or were g to do it; they had instructions—I do not know that he said Washington; it has been two years ago, and I could not say tively what all happened, but we both arrived at the same con- ion—if they put it in, what it was going to do; I had no doubt t it then. Mr. Adams asked me what I joined for, and I said n't fool with you fellows any longer; I can't serve on the par rance committee because I have got to clear at par. I do not mber all that was said. I then retired from the committee and its activities with reference to the campaign of the country banks. uld not join one thing and keep on on the other. While I ught we ought to have our exchange, still I quit, because I ught we had to. That was on the idea that we took the lessor wo evils you might say; if we could have kept the exchange I ld not have joined; that is the truth about it.

Cross-examination:

I have known Mr. McCord a good long while, sir; two or three rs, anyhow. We are friends; I like him very much. Possibly ad several conversations with him before the last one, but this one was the one when the fight was getting close and coming to grips. We had a friendly conversation, and in a business

way, too. I became convinced that we could not do anything that they were going to put par clearance over, he said so. He that they had it to do as they construed the act; and I think was trying to do his duty—what he conceived to be his duty. convinced me that they would have to do it. He convinced what he was going to do—that he was going to make them it—that's all.

288 Q. He convinced you that he was right, and you j the Federal Reserve system?

A. I am going to answer it that way. I am a member of the eral Reserve system, but I do not believe it is right to ma country bank clear at par. I do not care what the law says.

Q. You do not question that is the law?

A. No, sir; I do not, and I believe that these gentlemen are fo ing out what they believe to be the law.

Q. You are still a member of the Federal Reserve system?

A. I am.

Q. You have not withdrawn.

A. No, sir; I started to once.

Q. And since you became a member, you are remitting at pa the system requires?

A. Yes, sir; I am trying to obey their rules.

Q. In the beginning you only had capital stock of fifteen th sand dollars?

A. When we joined the Federal Reserve?

Q. When you first organized?

A. Yes, sir; paid in.

Q. You could not join the Federal Reserve system with capital?

A. No, sir.

Q. And in order to join the Federal Reserve system you incre your capital to twenty-five thousand dollars?

A. That was one thing we could have done, but you know thought come into my head—I mentioned it—I said if we do th we can then join if we desire, but that was not the prime moti the prime move was to keep down another bank.

Q. You raised your capital in order to keep down another ban raised your capital and gave up control of the bank?

A. Yes, sir: that is right.

Q. And you carried out your original idea and plan then became a member of the Federal Reserve system?

289 A. Yes, sir; it was not very long after that.

Q. They agreed that if you would give them control, could have your way and go into the Federal Reserve system?

A. No, sir; that stock was worth almost two to one, not quite th much—about one seventy-five; and I had not lost any money that fourteen years, and I did not want to lose my investment. I said to them, you can have all of my stock. I did not draw a salary. I have never drawn a salary.

Q. Are you connected with the Bankers' Trust Company?

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Yes, sir; I am——
How much do you pay them annually?
Seven hundred and fifty dollars——
For the services they render your bank?
Yes, sir; my contract with them—at the meeting in Macon in summer; I was one of the seven from that committee; there a fight coming on, and we met and talked it over, about publ in the papers, and getting ready to fight it out——
What did your committee do?
They hadn't done nothing, when I quit; we talked to Mr. he said they are going to make you do it——
Didn't you all agree that you had to do it, that that was the

No, sir; they said they were going to fight it.
Didn't they agree [illegible] wasn't the reason why th[illegible] did not do anyg they agreed among themselves that the Federal Reserve Act ad the banks to do it?
No, sir; the truth is, it was all right, as long as the Federal ve didn't put the screws on, and say they were going to colover your counter, or send it by express, we could go ahead and them and get our exchange; but the minute they did that—e other gentlemen, I talked with them, I was working for what I thought we had to do; I don't like to be held up and made to do a thing; if I know it is going to be done I come on up nicely and say all right I am with you.
You took your medicine?
Yes, sir, that is it; I wasn't even mad; I think they were just g to do what they believed was their duty; but I hated to lose ine hundred——
How else could the Federal Reserve bank accomplish par clear- if the bank refused to remit at par, except to present the checks e counter for payment?
They could have done that; but it certainly would be better hem to pay exchange; I know, personally, that they cannot col- a check any way in the world as cheap as to pay exchange.
If the Federal Reserve Act said they could not pay exchange had to collect the checks; will you tell us any other way they ld collect them?
Well the law ought to be amended so as to allow exchange; would be the easiest method. If they can't pay exchange, they n't got any right to pay a man to go over there to collect them e counter, or to pay the express company; that would be more nsive.
If you had been an officer, in Mr. McCord's or Mr. Wellborn's e, and had taken an oath to carry out the law, you would have to carry it out?
I would have done just what they did; I would have resigned ded to carry out the rules, just as I do now; if I could not y out the rules of the Federal Reserve I would withdraw.
There is nothing to prevent you from requiring your deposi- when they deposit a check—nothing to prevent you from de-

ducting interest on the amount for the three days, or the numb
days that check is out?

A. Yes, sir, there is the greatest reason in the world; and
knows that a country bank could not consider it. You men
live in town may be able to do that; but you say to a country
that he must put up that money, he would be outraged.

291 I know. A big bank has got their own resources; a big b
could stand it. My bank has seen the time if it hadn't
the exchange it could not have paid one man to stay there and
tend to it; take a little bank, with little deposits and it can't d
and you talk to a farmer about charging him and he will pu
money in his pocket.

Q. You think the act should be drawn so a farmer could do th

A. In some localities they may be educated up to it. One
told me how fifteen thousand dollars was got out of one large ba
if we talked about a thing like that we would have had a run.

Q. This is true, however; if you give that farmer credi
mediately he makes his deposit, knowing that check is going to
five days to be collected, you are making him a loan for five days?

A. That may be, but to him that is the same as money. It
was a question until this deferred payment come up; if a man
Cedartown sells cotton he is liable to be robbed or lose his chec
he draws the money out in cash—that would require two or th
times as much money.

Q. Do you think the rural sections could survive at all with
banks?

A. It is just like anything else, if you get used to it; you co
live without water or a bath in your home, or water in your kitch
but you would think you were going to die.

Q. You would not advocate going back to any such days?

A. No, sir; therefore I do not advocate charging a man for put
his money in a small bank. There never was any trouble bef
sent a check on and got the exchange and nobody was hurt.
little man got the money and the city man paid it. I have do
business with one man here of twenty seven or eight thousand d
lars in one day; since it has gone into the Federal Reserve, and
lost that——

292 Q. Your criticism is of Congress, and not of the offi
of the bank?

A. No, sir, not a bit.

Q. You do not think Congress ought to have passed the law th
way?

A. I do not, but they can't help it.

Q. When you went into the Federal Reserve system what reser
were you required to carry, under the laws of Georgia?

A. I forget that detail; I think 15 per cent.

Q. Wasn't the old law 25 per cent?

A. Maybe it was; I don't know sir.

Q. How much deposits were you carrying then?

A. That varies; that run all the way from thirty thousand to t
hundred and eighty thousand—the greatest it ever reached—

re we went into the Federal Reserve—had about two hundred eighty thousand.
Q. Wouldn't one hundred thousand dollars be about a fair average our deposits?
A. The last two years it would not be that——
Q. The years prior to that?
A. I guess so: but it was almost nothing to start with.
Q. The average?
A. I guess—over that period——
Q. And under the old law you were required to carry a reserve of ty-five thousand dollars?
A. I guess so.
Q. What reserve did you carry after you entered the Federal Re-e, 7 per cent?
A. I think about 3 per cent——
Q. Didn't that release the difference for loans up there—about teen thousand dollars?
A. It does on paper, but not on the facts.
Q. Why not?
A. Deferred credit is the greatest trouble I see—it is a fine system——

Q. I am talking about your released reserves?

A. You understand we have got to keep more than you on our books; that is one thing. A man came into our bank 1920 with a check between fifteen hundred and two thousand lars; he deposited it; we happened to be a little low and we sent n to Atlanta, and the man went on to Rome and give a check it; the check come back; the cashier said we have got to wait r days on his check; we were out of the money; that is what are up against.

Redirect examination:

Q. After you had to take your medicine, how did it do?
A. We gave notice going to withdraw the account—well, this g come on and we thought we were going to win then——
Q. Did you withdraw?
A. I did not; no, sir.
Q. Why didn't you?
A. This thing all come on; time it come we told them we didn't t to withdraw; they couldn't run us off; we hung to them; they e good to us; they give us money.

J. M. SLATTERY.

I am secretary of the Federal Reserve Bank of Atlanta; have n probably three years; very near. I am familiar with the exs from the minutes of that bank that have been filed in this e. The resolution adopted at the meeting of the board on Deber 11, 1919, recited that the other Federal Reserve banks e made rapid strides towards putting their respective districts

on a par basis; I could not state definitely what information
before the board of directors and developed the discussion as
what strides had been made by the other Federal Reserve ba
with respect to the enforcement of par clearance; they had a g
eral discussion of the subject, and that resolution was
294 pared thereafter. I was requested, in connection with
deputy governor, to draw these resolutions; therefore I
a joint author of that resolution.

I had no information as to the detailed activity of these other
tricts; the idea was that they had started a little earlier in the w
probably than the Sixth District. We had information of the w
that was being carried on in the other districts, in a general w
in establishing par clearance. I have no recollection definitely
to what discussion was had as to what was to be done as to the
forcement of par clearance in the Sixth District; just a gen
discussion at various times. I am not familiar with the Kittles pl
now. It was discussed then. I have forgotten just what it w
Mr. Adelson and the governor assisted in this; really, I assis
them.

Q. You are the secretary and was present at all the discussion
A. Yes, sir.

Q. Is it that you don't want to know or that you can't recall?

A. I can't recall; they were in a general way discussed as
said. The only thing I remember exactly is what is recorded.

Q. Do you mean that you have no recollection of the Kitt
plan?

A. No, sir; not definitely.

Q. Indefinitely?

A. No, sir; I don't recall.

Q. You have no recollection, then, as to what the Kittles pl
was?

A. No, sir.

No cross-examination.

295 P. R. Kittles.

I am one of the Class A directors in the Atlanta Federal Reser
Bank; have just finished my fourth year. I remember in 191
when the directors had several meetings during that year, and th
into 1920, and had up for discussion at various times the par-cle
ance campaign in the Sixth District. In the meeting of Decemb
11, 1919, the subject seems to have been dealt with at some leng
and I am quoted as stating that while I was not in favor of p
clearance, if it was the law we should proceed to enforce it; th
was my position at that time.

We had a map, which was exhibited, showing certain sectio
clearing at par, and further than that I had no particular inform
tion from any one. My general understanding was that practicall
no effort had been made to clear at par in this district. I was ad
vised that successful efforts had been made in some of the oth

stricts, as shown on this map; but some of those shown had been ar for some time; some of them had been for years. Every effort as made to work out some co-operative friendly plan. I suppose the hers had some plans; I don't know. I know—I believe, at least—at the one referred to there, according to the best of my recollec-on and belief, that was the one in which I suggested that we send these non-member banks items drawn on them, accepting them om member banks and explaining it to them, and simply asking em to remit at par, believing if a customer had the money to his edit that the country banker would remit for a number of them—el them out and see where they stood—see what opposition we ould have in par clearance before we tried to enforce it. I think at is the plan I recommended; that is what I wanted to do, I ink; it was a feeler, according to my recollection—a feeler; that the plan known as the Kittles plan.

My plan was just sending out items in the usual course of business to non-member banks—items drawn on it—and ask it to remit; then you would find out what to expect. My plan had nothing to do with respect to the guaranteeing of prior dorsements by the express company. The Kittles plan may have own into something like that, but not to my knowledge; it was t so intended in the beginning.

My attitude is this: I am a country banker, and I voted and ade every effort, as developments came up, with what I thought as consistent with righteousness and law; but it finally developed a question of construction of law, and that is the point we voted —construction of the law. We were advised by our counsel what do and we voted on it that way. I understood that under the law e were compelled to collect these checks and incur any expense go out and collect them. When we finally came to vote on the estion we were advised by counsel that it was mandatory.

Q. You spoke a moment ago of the effort you wanted made to these banks to come in voluntarily before you tried to force them par clearance; what sort of force did you expect to use?

A. I said enforce; I didn't say force them.

Q. Yes; how did you expect to enforce it?

A. To execute the law. We had been lagging behind the other stricts.

Q. But if a man pugnaciously stood out and said he would not it, how would you make him?

A. I am sure that no force was contemplated by the Federal Re-ve bank.

Q. But if he refused to do it, how were you going to make him it? You were going to do your duty; how were you going to ke him?

A. That is true.

Q. Well, if you had to do it and he refused, how were you going to ke him do it? Can't you answer that question?

A. Why, I suppose that would bring up the question of litiga-n; that was about the only way I knew.

Q. That is your idea?

A. Yes, sir.

297 Q. Mr. Kittles, you say you are a country banker?

A. Yes, sir.

Q. Do you think you could continue to operate your bank if all the checks that were drawn on it were presented over the counter for payment in cash all the time?

A. Be very difficult.

Q. Could you make any money in the banking business if you had to keep sufficient money on hand to meet all checks drawn by your depositors?

A. No, sir; I think not.

Q. Was this Kittles plan the alternative of what somebody else suggested?

A. My general fight was made for the regulation of the relations of the clearing-house bank with its customers, and if the city bank would take his customer's check drawn on me and it carried evidence of having been handled at par, I was willing to pay it. In other words, I wanted the public to have it and not the Clearing-House Association. I knew or felt that that would bring about after awhile a division of that exchange. I thought the country banker did not want all of the exchange; they are willing to divide with the city banks. That was one of my plans. I think the plan to which you refer was the one in which I wanted to feel out the district and see to what extent it could be parred.

Many of the board took the position—rightfully, I think—that where there were two banks in a country town, one a State bank and one a national bank, and the national member bank had to comply with this par-clearance regulation, that it was necessary, in order to conserve the interest of the member bank, the man already remitting at par, to have the non-member do likewise. I don't know just the purpose—I did not enter into a full discussion of that portion of the resolution.

Q. Wasn't it suggested to send checks out, and to have them presented at the counter for payment in cash, and that they could not stand that and would have to come in—in plain English, was not that the purpose?

298 A. Perhaps that was ultimately contemplated; perhaps it was discussed.

Q. It was just understood?

A. The Atlanta Clearing-House discussed it, yes. I understood that, I don't know whether the others did or not; my training in the Atlanta Clearing-House did it.

Q. Did not you decide on it as a policy and give these instructions for the purpose of carrying out that policy, that these checks on non-assenting banks would be presented either by a special agent or by the express company, and the cash demanded?

A. I guess the correct answer to that would be that it was ultimately contemplated.

Q. Mr. Kittles, at the time this circular letter of December 2, 1919, was sent out, in which Governor Wellborn, over his signa-

ture—was sent out by registered mail, in which he said to these country banks—I will read you the second paragraph: "However, the time has now arrived when, in justice to the 8,955 member banks of the Federal Reserve system, and the non-member banks who maintain clearing accounts with the various Federal Reserve banks, together with the 16,196 non-member banks who are remitting at par, we must, in compliance with the intent of the Federal Reserve Act, begin receiving on deposit, at par, checks and drafts payable on presentation, drawn on any bank in the United States, whether a member of the Federal Reserve system or not. This will include the checks and drafts drawn upon your bank, and the purpose of this letter is to ask that you join the vast army of par remitting banks by advising us it will be agreeable for us to include your name in the next issue of our par list, and that you will remit to us at par for items drawn upon you. While, as stated, the Federal Reserve Act does not permit us to pay exchange for the remittance of bank checks and drafts payable upon presentation, we can incur any cost that is necessary in order to carry out the purposes of the act, and we would very much regret to be forced to adopt other methods of collection that would prove embarrassing, annoying, and expensive to you." Hadn't the time come, when that letter was sent out, when you had exhausted all methods except the one you just said would ultimately have to be resorted to?

A. I am not so familiar with that letter, except the general conversation and discussion of the unfortunate wording; it was not submitted to the board, I think.

Q. What?

A. I don't believe that letter was submitted to the board. However, we instructed the officers to proceed, and it was not necessary. Knowing the parties as I did, I did not feel that that letter meant everything it said; I think it was one of those unfortunate utterances.

Q. How about the enclosure, Governor Harding's letter—it didn't mean anything it said?

A. I don't know; I don't know whether he prepared that or not; I had rather not discuss that; I am not familiar with it.

Q. Well, you tried the Kittles plan and that failed; the banks in this district were not responding to your friendly approaches, asking them to give up their exchanges and work for nothing, and the officers decided they had to do something to enforce this law. What else was there to do, unless you took the checks to the counter and presented them for payment, if they would not pay it without exchange?

A. That was a question for the officers.

Q. Don't you know that was what they had in mind to do and what was intended?

A. According to my country experience, I contemplated that; I felt that that was what it was; I don't know how they regarded it, but I felt that that would be the ultimate result.

Q. You thought that would be the result?

A. Yes, sir.

Q. Mr. Kittles, I want to call your attention to one or two letters which were sent out by the deputy governor of the Federal

300 Reserve Bank of Atlanta. I want to read a letter or two to you. I read a letter dated May 21, 1919, from Mr. L. C. Adelson, deputy governor of the Federal Reserve Bank of Atlanta, addressed to the First National Bank of Cartersville: "In order that you, and all other member banks may derive greater benefits from the clearing and collection facilities afforded by the Federal Reserve system, all the Federal Reserve banks are extending every effort to obtain additions to our par list. Since January 1st, 1919, a total of 1,270 banks have been added to the par list, but there are still a large number of solvent banks whose names do not appear thereon, and we, in co-operation with the other Federal Reserve banks, are continuing our efforts to the end that the number of banks on the par list shall be further increased, and that, in the course of time, there will be brought into existence a national par list."

Then there appears this paragraph in the letter: "You can help us to add at least one name to the par list by authorizing us to send to you for collection and remittance or credit, at par, items drawn on the Bank of Cartersville, who for reasons of their own have so far declined to remit at par for items drawn upon them. By doing this you will be contributing to the enlargement of the par collection facilities of the Federal Reserve system, and at the same time derive the benefits accruing to the handling of checks drawn upon your neighbor."

I want to ask you, Mr. Kittles, as a director of the Federal Reserve bank, have you as a director, or have you ever heard any other director of the Federal Reserve bank, express approval of any such arrangement as that?

A. No, sir; I never. I don't suppose it was discussed. But the benefits accruing to a bank sometimes is not measured by money; it may be information—information concerning your neighbor bank.

301 Cross-examination:

Q. Mr. Kittles, as I understand your testimony, it is to the effect that the board had numerous discussions about this par clearance in their several meetings; is that correct?

A. At least several discussions.

Q. And that it all resulted in the resolution which has been read here, leaving the details to the officers of the bank?

A. Yes, sir

Q. Leaving them to work out the details; that is true, isn't it?

A. Yes, sir.

Q. Neither you nor any other director were familiar with the day-to-day handling of the matter afterwards; is that correct?

A. We were not; I was not.

Q. And, so far as you know, none of the other directors were familiar with the details?

A. I knew of none.
Q. As a matter of fact, you live at Sylvania, Georgia?
A. Yes, sir.
Q. And Capt. Simon at New Orleans?
A. Yes, sir.
Q. And Mr. Newton at Jackson, Miss.?
A. Yes, sir.
Q. And Mr. Hartford at Nashville, Tenn.?
A. Yes, sir.
Q. And Col. E. T. Brown in Washington, and Mr. Ottley in Atlanta?
A. Yes, sir.
Q. Mr. Kittles, you stated in your opinion if a country banker is to be forced or compelled to pay in cash every check drawn on it by all of its depositors it would be hurtful to the bank?
A. Yes, sir; I think I did.
Q. And that if this par-clearance campaign was intended to include that sort of policy, in your opinion it would be hurtful to the country banks; that is your evidence?
A. Yes, sir.
Q. I ask you if the execution of the plan makes it optional to the country bank to pay either in cash or exchange at par, then the country bank would not have to carry cash to meet these checks; isn't that true?
A. They would not.
Q. As I understand, there never was any final plan, so far as you know, agreed on prior to the injunction being issued in this case?
A. No, sir.
Q. It was a mere matter of discussion up to that time, as to what should be done?
A. That is the way I understood it; we left it with the officers.
Q. And there was no definite plan of any kind?
A. No, sir; I think the plan referred to as the Kittles plan was contemplated prior to that.
Q. Friendly measures, to be followed with other friendly measures?
A. We intended to build a par list, revised as non-members reported.
Q. You said that in your opinion the expressions contained in that letter were not intended to be construed in the way they were by these plaintiffs?
A. That is just my opinion from my acquaintance with the parties; they never meant what they said.
Q. And there never was any intention at any time to annoy, or injure, or embarrass any non-member banks by the board of directors?
A. No, sir; not by the board of directors.
Q. Is it not true that the sole and only purpose was a conscientious effort on the part of the board of directors to carry out the law as they construed it?

303 A. I said it resolved itself into a legal question, and that is what was voted on; a construction of the law.

Q. And there was no intention to injure, embarrass, or annoy any non-member banks in the execution of that plan by the board?

A. I know there was not in my heart; I don't know about the other members.

Q. There never was any effort or intention at any time to present these checks to country banks other than in the regular course of daily business, was there?

A. I don't recall any.

Q. What did you say?

A. I don't know how they undertook to collect the checks. I am not familiar with it—yes, I am with one part; only one point was ever submitted to the board, according to my recollection, and that was an Alabama town. Mr. Tutweiler, I believe, was sent down there; I don't know that; that was our information; I don't know that he ever went down there. I think that was the only instance that was ever reported to the directors.

J. W. Cannon.

Resides at Cordele, Georgia. I am connected with the American Bank & Trust Company of Cordele, Georgia, that is the original plaintiff in this case—the bank from which this case takes its name. Prior to the organization of the American Bank & Trust Company I was connected with the American National Bank of Cordele, Georgia. That was a national bank. The American National Bank liquidated for cash and paid the stockholders $170 on the share and issued new stock for the new bank. The two operations were coincident. In practical effect the American Bank & Trust Company succeeded to the business of the old bank. The question of exchange was the prime motive for changing. We got exchange until the time the Federal Reserve Board put in their ruling on member banks—

304 I believe the Federal Reserve had been in operation about three years at the time we surrendered the charter; we had a national bank charter for eleven years.

The national bank, under the system put in effect by the Federal Reserve system, was bound by the regulations and had to remit cash items at par. While the name of our bank was on the par list, fully 90 per cent of cash items drawn on our bank and held outside of Cordele came back to the bank for collection through the Federal Reserve bank and its branches. After the change was made and we became a State bank, our name was not carried on the par list of the Federal Reserve. Thereafter none of the cash items held outside came for collection through the Federal Reserve banks, except such items as were payable by the Government, which we remitted at par, that constituted about 1 per cent of our business. The others came directly through the banks and clearing-houses of various cities.

No cross-examination.

E. V. Tidwell.

Lives at Atlanta, Georgia. I am cashier of the Atlanta Clearing-House. I supervise the collection of checks on country banks in eight Soutern States. The collection agency for the clearing-house is operated by the members of the Atlanta Clearing-House Association. The privileges of the Collection Bureau in the clearing-house proper is that of a member of the clearing-house. We give the banks receipts for checks sent us, and the checks are charged to us through the city clearing-house; we give the banks remittance checks sent us in payment of those receipts. These checks are delivered to me for collection twice a day. They have until 11 o'clock in the morning and 3 in the afternoon for deliveries. That is the time limit within which they have to send checks to us in order to get them out in
305 that day's work. All receipts we give are payable in two days. Not all of them could possibly get in in two days, but they are payable in two days, and each bank is charged with its uncollected portion. There is a special reason for the two deliveries a day; the 11-o'clock delivery covers mostly items sent in by out-of-town drafts and the 3-o'clock deliveries for checks deposited over the counter. They are all classed the same as regards returns to be made through the clearing-house. Our receipts uniformly obligate us to account for receipts two days afterwards and if we haven't got all the returns at that time we give a receipt, returnable the following day, to each one of their pro rata. We meet every day at 10:30. I meet there as the representative of the collection bureau with the clearing-house. I pay our obligations for receipts due. The collection bureau is always a debtor; it is always due a balance. There is no such thing as receipts by the collection bureau except collections from those checks. The average rate of exchange, the cost to the collection bureau of handling out-of-town checks, per one thousand, was $1.21 in 1919. That is just the cost of exchange. In 1920 it was $1.18.2. In 1921 it was $1.11.9. The banks, the members of the association, pay it, according to the amount they put in. The amount which each bank pays is determined by the amount of checks placed in my hands for collection. The other expense attached to the collection bureau is overhead expense. That is apportioned according to the number of items. One is according to the face value of the checks and the other according to the number of items. Those expenses are liquidated once per month. Checks that are not paid, which I receive for collection, are charged back to the banks that we receive them from. If I received in remittance for proceeds of those checks drafts on banks in Atlanta; they are charged to the banks they are drawn on and a settlement is made through the clearing-house. If we receive New York exchange for the proceeds, each bank gets its
306 pro rata of New York checks on other points, according to the amount we receive that day, figured on the basis of the per cent they put in on the day of settlement of checks and not receipts. That is merely a method of equitable distribution of the New York exchange.

Cross-examination:

This cost that I denominate exchange cost is to reimburse the clearing-house for the charge made by the banks on which the checks are drawn. That is the average during the year. We collect that from them and remit it to them; they charge us for checks. I simply reimburse myself that way. The overhead cost in 1920 was 1.2 cents per item; in 1921 it was 1.4 cents per item. If the drawee banks of these checks had charged no exchange these last items would be all the expense of conducting the clearing-house. That other expense would not be necessary at all if the exchange was eliminated. There are comparatively few clearing-houses in the country now. Prior to the inauguration of the clearing facilities of the Federal Reserve banks, there were something like five or six, if I am not mistaken—one at Boston, New York, Chicago, Cleveland, Nashville, Birmingham, and so on; in fact, all the larger cities had clearing-houses. I am only familiar with something like five or six; I am not familiar with the others. The rules of the various clearing-houses are all made by each one separately. I do not of my own knowledge know whether they are all alike or not. There could be as many different ways of handling this matter as there are clearing-houses in the country.

Redirect examination:

As to the clearing-houses about which I testified, in response to questions of counsel on the other side, I thought he had reference to clearing-houses that had a collection bureau. They are the only ones about which I testified. Clearing-houses exist that do not have a collection bureau, in a number of large cities. Only about
307 five or six have ever been in existence, to my knowledge, with collection bureaus attached. Those are the ones to which I refer. A great majority of the clearing-houses are where the members meet and settle their balances daily between themselves, and each one of them attends to the collection of their own checks.

MARK W. MONROE.

Quincy, Florida. President of the Quincy State Bank since 1892. That bank is not a member of the Federal Reserve system. In the matter of charging for services in remitting the proceeds for cash items sent from outside of Quincy, we charged a ten-cent minimum charge, with a rate of one-tenth of 1 per cent, for quite a number of years; before then we charged one-eighth. I was approached by the Federal Reserve bank with the request to sign an agreement to remit these items at par. When they first put the threat out that they were going to use the post-office on us, we did not know how big a bear they had in the woods, and we agreed temporarily to clear them at par, until we found out how bad it was, and we discontinued it after a short time. I mean by threat that they would use the Post-Office Department, but when it was determined by the

partment that the post-office could not be made the agency for collection of those items, we discontinued it. I didn't know how it would be for all the items to be congested through the post-office, and demand the cash; they might catch us shy sometimes. We had experience later on with them, in 1920. The checks were then presented by the express company through a special agent, who presented the first batch. His name was Hunter—a sort of state agent or auditor. February 12, 1920, was the date. I couldn't tell you exactly how many were there—a stack about that high; a hundred or more; for account of the Federal Reserve Branch at Jacksonville, Fla. The aggregate amount in dollars was twenty-seven thousand six hundred sixteen dollars and eighty-six cents. I think there were upwards of a hundred in one batch.

The circular letter came out, stating that they would use any means to collect them, and the newspapers had reports that the express company would be used, and we fortified ourselves. We shipped currency. Our ordinary balance of currency required was forty-five or fifty thousand dollars, but we had shipped in currency and had on hand seventy-five thousand dollars or over. On the 13th day of February, 1920, there were two letters presented by the local agent for collection from the Jacksonville Branch of the Federal Reserve bank, one letter containing items totaling $9,793.95 and one letter containing $8,256.00—a total of $18,149.95—making a total of over $45,000 in two days. There was a big bunch of them on the batch, possibly fifty or sixty checks, in the two letters. On February, 1920, at the close of business, our deposits were $1,238,485.85 in the regular course of business. To illustrate how average daily letters came: On February 14th the Federal Reserve bank sent a regular collection item, which amounted to $3,461.46—to show you how the items came through the regular channel. On February 16th they had discontinued the use of the express company; on the 16th they sent for collection through the mail, like any one else, a letter which contained $926.09, on which we charged 93 cents; on March 10, 1920, the Jacksonville Branch sent an item of $714.64; the charge was 44 cents; on April 12, 1920, there was an item came in a cash letter, for $1,278.22; the charge was $1.28; on May 14, 1920, there was a cash letter for $1,489.40; the charges were $1.50. Those are what would have come regularly into their hands. Of course, if they had got hold of any unusually large item it would have amounted to more.

I have been in the banking business since 1892. In keeping balances with correspondents, arranging to draw drafts, making the necessary book entries for the remittance of foreign checks, we require the services of one clerk and one-half clerk. The stationery we use and the envelope would be three cents, but the Federal Reserve banks kindly send a stamped envelope for theirs; they do that now. We have to use our own forms and drafts. Our source of supply of currency is Jacksonville, Fla., one hundred and twenty miles distant. We have two trains daily each way, but the only way we can get money is on the 4:30 train in the afternoon.

There is no possiblity of increasing our supply of currency after t bank opens in the morning. The train leaves Jacksonville at o'clock in the morning, and if we had the demand made today could not replace it until tomorrow afternoon. As the result of experience just detailed, we had to increase our supply of cas we ran up to seventy-five thousand dollars, to where we were re for them on that, when those larger items came in, you see. On 11th of February we had cash in the vault, $71,217.47; on the 12 when they dragged us with the big bunch of checks, that left cash $36,272.72; on the 13th we had left $24,862.67, and on the 1 we had $99,800.68. We had increased our currency by shipp it in, and from then on we succeeded in maintaining it from nin nine thousand to a hundred and ten thousand, until the menace h passed.

We had a large number of complaints from our depositors; t complaints have been frequent that creditors to whom they had mitted checks claimed they had been returned marked "insuffici funds," when they had never been presented to the bank for pa ment. The most recent complaint we had was that by Mr. S. L Stone. We had the complaint from Mr. S. L. Stone that he had s the check off, and it was returned to him unpaid on account of sufficient funds. That check, when it was paid by us, bore the e dorsement of the Federal Reserve Bank of Atlanta, dated October 1921. There was nothing written on the back, but it showed wh something had been rubbed off. I examined that ch
310 myself; it had never been presented to the bank before t time it came back. It bore the endorsement of the Fede Reserve Bank in Atlanta, dated October 19th, showing that it h passed through that bank. When that bunch of one hundred more checks was presented to our bank the route agent of the e press company asked for payment in cash. There was no suggesti that we pay him in exchange. We have been mixed up in that ki of rows before and we were fixed for him and never asked any fav at all. He demanded the cash. We have to carry our reserves cash or cash balances and are permitted to carry State, city, or m nicipal bonds. Our reserve is 20 per cent of our deposit. The u amount of currency carried was thirty-five to forty thousand dolla

Cross-examination:

Our capital was $100,000. When this was presented to us deposits were $1,238,485.85. That is about the way it ran. T are a little short now, on account of the hard times; about $1,075,0 Our reserve should have been $247,699.17; that could have be made up in three forms—cash balances with banks, cash on hand the vault, and bonds counted as part of the cash reserve. I do think our bank is a party plaintiff to this suit. I think there was sort of general coming in of us all. I don't think I am a party. never did retain anybody or enter into it, but I think there is a co cert among the bankers in Florida, through the Banking Depar ment of the State, to intervene.

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Q. Now you say an agent came and demanded the cash—that he paid cash?
A. Yes, sir.
Q. Did you offer to pay him in exchange?
A. No, sir; we don't offer to pay exchange when they come to the counter and present a check.
Q. You just paid the cash?
A. Yes, sir; when a check is brought to the counter that is always done.
Q. You don't know if you had tendered him exchange but what he would have accepted that?
A. A bank never tenders exchange when a man presents a check across the counter.
Q. Yes, but you are undertaking to testify as to this particular transaction; do you know that exchange would not have been accepted?
A. Well, it was because in all of our dealings with the express company we had always dealt with the local agent, but in this case they sent a special agent to see that the cash came up.
Q. It is still true, however, if you had tendered him exchange instead of the cash he may have accepted it?
A. I don't think he would have.
Q. You had no right to think; do you know that he would not?
A. He demanded money.
Q. And you didn't tender him exchange?
A. Yes, sir.
Q. And your complaint is now that he asked for cash and you didn't tender him exchange, and you are complaining?
A. No, sir; I didn't complain about that.
Q. You did not complain about the Federal Reserve bank inaugurating par clearance?
A. Yes, sir.
Q. Well, what is it?
A. My position is no one has any right to require another to work for another at an expense to himself and feed himself. A heavy expense is thrown on a bank to main this department. And another feature is the Federal Reserve banks are meddling in a matter that does not concern them. In every business, the business of the manufacturer and the wholesaler, they have fixed as an overhead item of expense the item of collection, whether by exchange or through some commercial agency. That is all paid by the country customer and the effort of the Federal Reserve bank is to make the country customer pay twice.
Q. How?
A. They write and send out courteous letters to us, telling us we have no right to put them to any expense; they are not authorized to pay any exchange, but at the same time they are perfectly willing that we, over whom they have no jurisdiction or control—they have no objection that we should charge our customer interest on the temporary float on every item that is placed by him on deposit. They claim that they are not permitted to pay exchange, though they

pay us exchange on every item. The last item here, the Bell-Bo Hardware Company, on December 21, $716.10, we charged exchan on that; it was right when we are having all the trouble. And Fe ruary 16, 1920, and on March 4, 1920, and on April 11 19 and on May 14, 1920, their letters came to us, and we charged th exchange and they never did kick about it.

Q. The burden of your objection to the policy of the Federal R serve bank, as you understand it, is if you comply with what t want you to do, you cannot charge exchange, and you think y ought to have that privilege?

A. Yes, sir; because we get no benefit whatever from them n any favors. I never heard of any State bank asking a favor of t Federal Reserve bank, and if they asked one it would be refused.

Q. What I am trying to get at, Mr. Monroe, is that you objec what you understand the policy or plan of the Federal Reserve ba to be because if you comply with it you will not after that ti have the right to charge exchange?

A. Yes, sir; exactly it; and exchange is a legitimate charge of t banking business.

Q. If that is the case, why didn't you tender Mr. Hunter exchan instead of cash?

A. My dear sir, have you ever run a bank?

313 Q. No, sir.

A. Well, whenever you run a bank, and a man brings check and puts it across your counter, you know he wants mon cash. If he wants anything else he says, I want exchange, or cashier's check, but until he says that, when he puts it across the that is an implied demand that he wants the money. No solv bank can stop to quibble about things like that; that is underst and that is the reason we fortify ourselves with the cash.

Q. I thought every checkholder—has not every checkholder g the absolute right to come and present his check and demand t cash?

A. He has, in the ordinary course of business; he has no ordinar right to come and bunch stuff on us.

Q. I did not ask you anything about bunching stuff on you. Y honor, I am not trying to tangle the witness. I ask you, Mr. W ness, the simple question, Do you not, as an expert banker of l experience, consider that it is the unqualified right of the hol of any check, no matter who he may be, of any bank, the expr company, or anybody else, to come to that bank during banki hours and tender that check over the counter, and it is your duty pay that check in cash?

A. Yes, sir, unless our customers stamp some restriction on it.

Q. That is what I asked you; everybody has got that right?

A. Yes, sir, with the qualification I just made.

Q. Then why did you object to this plan; if you are willing pay every check presented at your bank, what is your objection?

A. They bunched them on us.

Q. Prior to the time that Mr. Hunter came to the bank, you ha

COPY BOUND CLOSE

correspondence with the Federal Reserve Bank officials about the proposition as to whether you would pay them or not?

A. No, sir; when they made the demand we threw that in the waste basket and never answered it.

Q. You did not; you did not show them the courtesy of a reply their communication?

A. That had all been thrashed out before that; I had notified a good while before that.

Q. How long before?

A. Well, they had the banks buffaloed for a while, when they atened to use the post-office on us.

Q. I am referring to the Hunter transaction; that was the 12th February?

A. Yes, sir.

Q. How long before that was it that you had advised the Federal serve Bank officials that you would not pay their checks through mails without deducting exchange?

A. I can't remember the dates.

Q. What month was it?

A. When they began to put into force par clearance——

Q. I am speaking about this time in February; how long before

A. It was a good long time.

Q. A month or two, wasn't it?

A. Longer than that.

Q. They had notified you that, you being unwilling to pay the ks without exchange, they would have to adopt some other of collecting them?

A. They never notified us in any personal letter. You speak t my being discourteous——

Q. I didn't use the word discourtesy?

A. You said I didn't give them the courtesy of a reply.

Q. Yes, that's what I said.

A. That is the same thing as discourteous; this was not a personal r, but a circular demand.

Q. It had been a long time before Mr. Hunter, the agent of the express company, came to your bank, when the Federal Reserve Bank in Atlanta knew that you would not pay the checks without exchange?

A. Yes, sir.

Q. At least two months, wasn't it?

A. Longer than that, I expect.

Q. How much did your daily letter amount to, on the average, m the Federal Reserve bank, before you had any trouble with m at all?

A. I will show you how it run after the trouble.

Q. Before the trouble?

A. I never had no letters from them.

Q. Didn't they collect from you before that?

A. It would amount to a few thousand dollars.

Q. What do you call a few thousand dollars—five or ten thousand?

OSE IN CENTER

A Three or four thousand are a few thousand.
Q. A day?
A. Yes, sir.
Q. There was a time when you remitted to the Federal Reserve bank for their daily letters, deducting exchange?
A. Yes, sir; two or three months, I think.
Q. During that period the items on your daily letters amounted to a good many thousand dollars a day?
A. Only a few thousand.
Q. A few thousand a day?
A. Yes, sir.
Q. As much as three to five thousand a day?
A. I could not positively say.
Q. And of course you had not received any letters from them through the mails for several days before Mr. Hunter came down?
A. We had not received any for a good long time.
Q. They told you that they were forced to adopt this method reluctantly?
A. Not reluctantly.
Q. They said they would be forced to do it?
316 A. No, sir; they said they would.
Q. They were not rough about it, were they?
A. Yes, sir; pretty rough.
Q. They wrote you courteous letters?
A. No, sir.
Q. Have you got any of those letters?
A. No, sir; I haven't; they just laid the dictum down.
Q. Could you get any of those letters?
A. No, sir; after I read them I threw them in the waste basket. That circular letter is a matter of common notoriety.
Q. Didn't you get a letter?
A. No, sir; just a circular demand.
Q. Didn't you get some ordinary, common, every-day letters?
A. No, sir.
Q. They never wrote you a single letter about par clearance?
A. No, sir; the only thing was the regular circular form.
Q. That was not a threat, a terribly vicious circular?
A. No, sir; they just said, Come across or we are going to punish you.
Q. Now, didn't it say, Here is the law, and would not you comply with it?
A. They always claimed they could not pay any exchange, that they paid us exchange recently.

The Court: It seems to me this is taking up unnecessary time; the letters are here.

Q. How did you build up your balances in correspondent banks?
A. We sent them checks.
Q. How many correspondent banks have you got?
A. Well, we have three in New York, one in Atlanta here, one in Savannah, and three in Jacksonville.

COPY BOUND CLOS

Q. Several in all?

A. Yes, sir.

Q. How much would be the average amount you carry with these seven banks, the fair average?

A. Our balance—we have got ten thousand dollars with the ...ens & Southern here—I will give it in round figures: $3,200 ...h the Bank of Commerce of New York night before last; $55,000 ...h the Seaboard Bank; we have a temporary balance in the bank ...2,000; $49,000 in the Florida National; $90,000 with the At... National Bank; $4,300 with the Park Bank; $85,000 with the ...nett National Bank, and $38,000 in cash in the bank, besides ... bonds.

Q. When these daily letters come in, they are paid by check on ... or the other of these correspondent banks?

A. All items that come through Jacksonville are paid by checks ... Jacksonville; all items that are not cleared through Jacksonville ...ay them with New York exchange.

Q. They do not charge you anything on checks drawn on them ...ayment of letters?

A. That would be too good for anything. They do that in the ...ippine Islands. I have always wanted to go to the Philippine ...nds ever since I heard they charged a man exchange for cashing ... check.

Q. You would do that if you could?

A. Sure I would.

Q. These items you say that were remitted to the Federal Reserve ...wards and you deducted exchange were regular coll-ction items?

A. No; they were cash checks issued by our customers in payment ...bills.

Q. Were not they drafts or collection items?

A. No, sir; they were checks on the bank.

Q. Do you know whether the holders of those checks had in...ted this bank to handle them as collection items?

A. They never do that.

Q. You don't know about that?

A. When a merchant owes a bill and sends a check for it, that is presumed to be a cash item; they came in cash letters.

Redirect examination:

...We get 2 per cent on New York balances; 3 per cent on Atlanta ...nces; 3 per cent on Savannah balances, and 3 per cent on all ...nces in Jacksonville except with one bank, and that is 4 per cent. ...never send that bank anything in the way of collection items. ...n we had to increase our cash in bank it diminished the interest ...ning on about $60,000. It will diminish our lending capacity by ...e amount we have to carry in cash. The rate of interest in Florida ... per cent legal interest and 10 per cent contract.

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319 *Defendants' Oral Evidence.*

L. C. ADELSON.

Atlanta, Ga. I have been deputy governor of the Federal R
serve Bank of Atlanta since March 1, 1919. Prior to that time
was assistant secretary to the Federal Reserve Board. As depu
governor, I have general supervision of the operating departme
of the bank. I have had active participation in the so-called p
clearance campaign of the Federal Reserve Bank of Atlanta.
was turned over to me to lay out the plans and submit them to t
other executive officers and the executive committee for their offic
determination. I did so. I had charge of the correspondence
that subject. I have a list of the banks plaintiff to this suit wh
have agreed to remit at par since the bill was filed. Of the part
plaintiff to the suit that have voluntarily joined The Federal R
serve System since the bill was filed there are twenty-six. The
are twenty-four in the interrogatoies; there are two others, viz.,
the Habersham Bank of Clarkesville, Ga., and the Bank of Gra
mont, Graymont, Ga. I have a list of banks not parties plaint
to this suit that have voluntarily joined the Federal Reserve sy
tem since the bill was filed; a total of forty-eight. In addition t
those named in the answer to interrogatory No. 193, there are s
viz., the Alabama Bank & Trust Co. of Montgomery, Ala.; th
Merchants & Farmers Bank of Roanoke, Ala.; the First Nation
Bank of Ft. Lauderdale; the Citizens Banking Co. of Eastman, Ga
the New Orleans Bank & Trust Co. of New Orleans; the First N
tional Bank of Harriman, Tenn., which is a conversion of the Fir
National and the Manufacturers Bank of Harriman. I have n
names of banks in the district that voluntarily agreed to remit
par since the suit was filed; there are thirty-seven in t
320 interrogatories and four since: The Bank of Newton, New
ton, Ala.; the Bank of Silver Springs, Silver Springs, Fla.
the Farmers & Merchants Bank of Tennille, Ga., and the Bank
Mountain City, Mountain City, Tenn.

I heard the testimony of Mr. Mark W. Monroe, of Quincy, Fl
At no time, under my direction, or, so far as I know, under any
body's else direction, were order given to the express company
accumulate checks and present them en masse for payment. The
Jacksonville Branch was operating under my direction at that time
I think about January 31st it was when the Jacksonville Bank sen
a cash letter to the Quincy State Bank with the explanatory lett
from that branch stating that it could not pay exchange and re
questing a remittance at par, but if they were not willing to rem
at par to return the items. On February 5th, 1920, I think it was
in a letter signed N. B. Jordan, cashier of the Quincy State Bank—
anyway, three cash letters which had been similarly sent to the
Quincy State Bank were returned, which obviously had been an
accumulation of several days and which was held up by them.
We had incurred some liability, after they had been held up by
that bank by reason of their being in suspense, and when they

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ere returned to the Jacksonville Bank they were instructed to rn them over to the express company for collection without any ecific instructions as to how payment was to be made. There s no design to accumulate them for the purpose of embarrassing e Quincy State Bank. That policy has been pursued only in few similar instances, as stated, where several letters had been nt down and they did not remit at par, and when they were urned to the bank we sent out a man, in order to relieve our bility as soon as possible; the liability that arises through negli- nce in handling checks, and that might be construed by the court, it came to an issue, by holding these checks a long time—we ght be chargeable with negligence. I understand the duty of the receiver of a check to be to immediately present it for payment. No policy of accumulation of checks has been pursued deliberately towards any bank in the Sixth Dis- ct by the Federal Reserve Bank of this district. I am one of the rties who signed and swore to the interrogatories which have been al. I accept those interrogatories as my individual and corporal tement as to the facts in this case and adopt them as my testimony.

Cross-examination:

Q. Mr. Adelson, you wrote a number of letter late in the year 19 to the banks throughout the Sixth District, or rather you istered to these banks a form letter, dated December 23rd or th—I don't know which date you used—attached to this bill as hibit B, enclosed in that a letter from Governor Harding, of the deral Reserve Board, attached as Exhibit A?

A. Yes, sir; it was sent out by the mail department under my rection. I had general supervision of that.

Q. You sent out more than a thousand of them, did you not?

A. I do not recall offhand the total number.

Q. A very large number; your exhibit shows 1,050. Is that in ord with your recollection?

A. I could not state positively; there must have been in that ighborhood. I received various and sundry answers to that let- r. Some agreed to remit at part. Some said they did not want remit at par; others did not reply. I wrote follow-up letters cifically in reply to those from whom we received a reply to the ter of December 23rd. In a number of these letters I stated if y did not reconsider and agree to remit at par that it was our pose to send these checks out for payment in currency over ir counter; I think I said something like that.

Q. Wasn't that your intention at that time?

A. At that particular time one of the methods being considered we had not definitely determined——

Q. You meant to do it then, when you said it, did you not?

A. No; I can't say that I did.

Q. You did not mean what you said?

A. No, at that moment; we had not definitely decided.

Q. I asked you did you not mean what you said?

OSE IN CENTER

A. It stated in the letter that they would be presented for payment over the counter.

Q. You meant to do that?

A. No, I did not positively mean to do it; I don't know whether I would, or would have done it otherwise.

Q. But you did not say anything in the letter about being in any doubt?

A. They were not supposed to construe my letter that way.

Q. The other fellow could not have considered that you meant to do anything else, from the letter?

A. I don't know what he could have done.

Q. Mr. Adelson, are you the author of the idea to obtain the services of one bank to collect from the other, and that thereby the competitive bank could get beneficial information about his neighbor?

A. I have seen that——

Q. You were the originator of that—suggested it?

A. Not the originator—it is used all over the country in transit departments.

Q. You originated it as far as this District is concerned?

A. I have been in the transit department of other banks.

Q. Federal Reserve Banks?

A. No, sir, other banks.

Q. What other bank in this part of the country have you ever known to make use of that idea, except the Federal Reserve bank? Were you in the banking business before you became connected with Governor Harding?

A. Before he became connected with the Federal Reserve in Birmingham; I came to Atlanta on March 1, 1919. About
323 four years after my first connection with the system, a little more than four years. I was made deputy governor when I came here. I had not been elected deputy governor before I removed from Washington to Atlanta; I had not applied for the position.

I was not familiar with the activities of the Federal Reserve Board, arranging for the universal par clearance system then in progress, only to the extent that general circulars went out on the subject. I only knew that the Federal Reserve par-clearing plan was a part of the act, and that it was being brought into being; that is all I know. I had no connection with it. I first took special charge of the par-clearance campaign as an incident of my duties. I took it under consideration about the middle of 1919. I came here the first of March.

Q. I show you a letter of July 12, 1919, without an address, calling for the signature of the deputy governor, and bearing your initials?

A. I dictated that; it is a form letter, was used in connection with the par-clearance campaign. (See Supplement No. 1, p. 15.)

It was sent to banks at that time not remitting at par. In that letter I stated that the twelve Federal Reserve banks are uniting in their efforts to bring about the establishment of a national par list, and that rapid strides are being made in that direction. The Fed-

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al Reserve Bulletin each month shows the number of banks added
the par list. I kept in touch with it; I kept myself informed on
at subject. I knew what progress was being made in the other
stricts; that was obvious, from the number of banks reported. At
at itme we were not making any progress in this district, that
ight be termed rapid; on July 12, 1919. At that time the ex-
nsion of the par-clearance banks was one of my duties, and this
ver was one of the things I began to do to hasten the progress of
e campaign in this district. From what I could see in the Fed-
eral Reserve Bulletin—each bank adding a number of banks
each month—they were extending their efforts. That is
the only par list in the United States; it is printed by all
nks; it is printed in Washington, only the central source, where
ch of the Federal Reserve banks list their additions and with-
awals, and for economy it is sent to the Federal Reserve Board,
d each bank is listed with its pro rata of the cost. Information
nt by the several banks is accumulated there and printed. It in-
ludes the par list of all the banks.

If you add the twelve districts together that would make one
stem, and we have but that one list. That list is identical in all
e districts; each bank contributes its part. It is all from the
me printing press in the interest of economy, but there is no
ange made in Washington except from instructions from each
nk. Then those instructions are combined, are accumulated, or
ncentrated, and put in one document and redistributed to each
nk. The Exchange List issued monthly is also furnished by
e several Federal Reserve banks. The par list is issued semi-an-
ally and the exchange list monthly.

That is why I advised that I could not remove a man from the
r list, because instructions had gone to Washington and were in
ess, and he would have to wait until the next month. When a
nk's name went on this par list, information of that fact is fur-
shed to the Federal Reserve Board by the authorities from the
nk in the district that bank is located. I and my subordinates,
associates, furnished to the Federal Reserve Board at Washing-
n, the information necessary to compile this list and reports every
onth. When we put a bank's name on that list, that informa-
n is distributed to every Federal Reserve bank, and every branch
the United States if they received a copy of the par list. They
e supposed to receive it. This par list goes to member banks of
e respective districts, whether State or National. A State bank
that is a clearance member would receive a copy also. The
member banks are charged nothing for the par list; they
are furnished them free by the Federal Reserve bank of their
strict, and as many as they ask for. Barring some slip or failure
ask for it by some bank here and there, this par list goes into
ery bank in the United States that is a member, or clearing mem-
r of the Federal Reserve system. That is true also as to the
onthly exchange sheets.

Prior to the appearance of a bank's name on this par list, no
ems drawn on that bank come through the Federal Reserve bank,

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unless they are payable to the Government, except occasionally an item from the transit department of a commercial bank is misrouted to the Federal Reserve. That would be by mistake.

Q. But if it follows the regular channels it will never get into the Federal Reserve bank, unless it is on this list?

A. They may choose to do that, and it would be handled as a collection item, and not as a cash item—if we get specific instructions it is handled as a collection item.

Q. You could if they wanted you to?

A. Under their directions.

Q. Suppose they didn't give you any directions, could you handle it any way?

A. Return it to them.

Q. Why?

A. The bank not being on our par list we could not pay exchange, unless the sending bank instructed you to pay exchange.

Q. Then is it not true that the mere placing of a bank's name on this list operates to raise the prohibition of the Hardwick Amendment against the payment of exchange by the Federal Reserve bank?

A. I would rather not discuss that. I do not understand it.

Q. Mr. Adelson, you have just said that if a bank's name is not on this list, and a check drawn on that bank gets into your bank for collection, you can send it for collection and pay exchange charges?

326 A. Under specific instructions of the sending bank.

Q. Suppose you assume to collect it?

A. No, we won't.

Q. Then it is returned unless they ask you to collect it?

A. Yes, sir.

Q. You do not have to handle it?

A. If they send it and give specific instructions we have to.

Q. You do?

A. I think so.

Q. Then you become the involuntary agent of another bank if it chooses to use your bank?

A. If we are asked to; if they send it to us and specify to pay exchange I think we have got to handle it.

After a man's name goes on this list, if he is in our territory, we get checks drawn on that bank after the list has had time for circulation; we get a percentage of the checks drawn on that bank that are afloat. I would not say that we get practically all the checks that pass through any member of the clearance system.

In answer to question No. 295, of my interrogatories: "All national banks, and all State member banks avail themselves of the clearing system." I say now they may send them through some other source but my answer to question 295 is correct. They do not have to send us everything, but they all avail themselves of it, sometimes, incidentally, but not necessarily, as a banking practice. As a matter of fact, all of them do not avail themselves of it fully. Some of the interior banks send items through State banks, and they

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reach us in that way, some non-member banks do not send at par, remit to State banks. The placing of a man's name on this par list that goes all over the United States, has the effect or tends strongly to have the effect, to converge into the Federal Reserve banks of the district in which any bank happens to be doing business, a percentage of foreign checks. I could not state, definitely, what percentage; it varies. If every bank in the United States was on the par list it is not true that every check to be handled as a collection or cash item would pass through some branch of the Federal Reserve bank. That is the whole object of universal par clearance, if the banks will avail themselves of it. For some reason they might want to maintain some reciprocal arrangements, and in that case they might be willing to pay exchange. We would not then have universal clearance—but it would be available. It is one of the slogans of the campaign that a farmer's check for $5 ought to be worth one hundred cents on the dollar at the counter of the drawee bank.

Q. What is the distinction; it is always worth that at the counter of the drawee bank?

A. Not if he charges exchange when he remits it.

Q. That is not the problem; I said at any bank in the United States; otherwise if you are going to make a charge where is your par clearance?

A. The charge at another bank would be for the advancement of the funds for the time it took the check to reach the drawee bank.

Q. Then the holder of the check, removed from the home where it is drawn, does not get 100 cents on the dollar?

A. It is the same as his note for $100—two or three days, the bank would not discount his note without an interest charge for the time; for the use of the money. That is not one of the elements in the exchange charge. There is a difference, the bank with whom check on another town is deposited may not charge exchange, some banks do and some banks do not charge for time involved in collection. The payee pays the charges; the holder should not pay though. It does not make any difference whether you call it interest on the float, or compensation for service; the holder is still out the money; it does not make any difference to him. If the drawee bank would remit at par—then the holder would be paying for borrowed money.

So if our system was complete and we had every single bank in the United States on our list, and every bank was using that list, you could take a check drawn on Atlanta and go in any bank anywhere and get 100 cents on the dollar on that check without any charge except a very small charge for interest time. It would cost you something for the loan of the money, the time it takes the check to be collected. I never gave any order to the express company to accumulate checks on this bank in Florida. They could accumulate them if they gave them two or three packages of checks; different packages that were held for several days by this bank. It would be an accumulation of several packages after the bank itself had held them. If all the checks I receive in one day are forwarded

OSE IN CENTER

the same day there is no accumulation. If I sent a runner around town to everybody who deposits in the Atlanta National Bank and had them send their checks to my office, I would not call that an accumulation on the Atlanta National Bank if I presented them the same day. I would merely call it a convergence of checks I see a difference between concentration and accumulation. Concentration is at a given point where they will meet at one time, at one day and if I immediately send those checks out that day I have not accumulated anything; if I receive checks today and receive checks tomorrow, and hold these checks until the third day, I would be accumulating something.

Q. If you made a dollar here at one place and got busy and made another dollar at another place, and then another dollar, haven't you accumulated three dollars?

A. This is entirely a different thing.

Q. You think then accumulation has no relation to number?

A. Not on a question of par clearance, as you are talking about.

329 Q. Have you any conception of accumulation with respect to numbers; can't you accumulate a number of checks?

A. You can concentrate them; you cannot accumulate them, only as I described. Not what I call accumulation, in the sense of getting checks. I have no conception of accumulation as related to numbers, as you want me to. I could not state how many banks' names I have sent to Washington to be put on this par list that have not given their consent.

Q. Did you ever do it more than once? Did you ever accumulate them?

A. No, sir.

Q. Did you ever concentrate them on it?

A. Yes, sir; put on a few at one time in January, 1920, right after that letter went out. When we sent out some of these cash letters with the request for remittance at par; and some of the items that came back we turned over to the express company, and in one or two instances I do know they tendered us exchange in payment, and it was received from that bank without instructions from us, and we accepted it.

Q. Mr. Adelson, you have answered both in your interrogatories and in the amendment to the answer this morning, that it is the purpose of the Federal Reserve Bank of Atlanta to present checks for payment at the counters of non-par banks and to accept either cash or exchange; please explain to me what kind of exchange you would accept—that it is your purpose to accept under that arrangement?

A. The draft of a solvent bank, drawn upon a solvent bank collectible by us at par.

Q. The draft of a solvent bank?

A. Yes, sir.

Q. I will ask you whether or not the refusal of a bank to remit at par would have any effect on your judgment as to its solvency or insolvency?

A. The mere fact that it refused to remit at par?

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Q. Yes, sir.

A. No, sir; I would not say it was insolvent on that account.

Q. Would you make any difference, with all the other conditions being the same, as to the kind of exchange you would accept from a bank that did not agree to remit at par and exchange you would accept from one of the banks that did agree to remit at par?

A. I would accept the same character of exchange provided the bank was solvent.

Q. All the other conditions being the same, would there be any distinction?

A. No, sir; there would be no distinction.

Q. Suppose you presented one or more checks to a non-par bank and demanded currency for them, and the bank was embarrassed by the amount of currency demanded and tendered you a piece of exchange payable in Atlanta at par, and you declined to receive it and if the bank then changed its mind and agreed to remit at par, would you receive the identical exchange?

A. I would have to have a good reason for not accepting it in the first place, and if that same reason prevailed afterwards I would not accept it then.

Q. His change of mind, and agreeing to remit at par, would not have any effect on you?

A. No, sir; if I had not considered it good when presented at first, I would not consider it good then.

Q. Mr. Adelson, do you know anything about that arrangement you had down at Dothan, with Mr. Tutwiler, about the presentation of checks on non-par banks?

A. I know something about it, it was reported to me.

Q. What was that situation—it is referred to in the minutes of the directors?

A. Mr. Tutwiler was sent to Dothan—he had formerly lived there—to present these checks for payment; he presented them at the counter of the bank and the cashier immediately paid him in cash——

Q. What bank was that?

A. The Dothan Bank & Trust Company——

Q. A State bank?

A. Yes, sir, and at the same time he showed to Mr. Tutwiler a large desk covered with old torn one-dollar bills, and told him we have been preparing for this, and we will try to wear you out with that kind of currency.

Q. Did he accept those bills?

A. He did.

Q. How long was he retained at that place?

A. I don't know the exact number of days; it was not a great while. The Dothan Bank & Trust Company later intervened, and upon receipt of notice that they had intervened, we stopped him. The temporary restraining order caused me to withdraw him. He had been there several days. He was sent there from the Atlanta office. He is still here. I don't know the amount of collections he made while he was down there. We had information that our men-

OSE IN CENTER

ber bank was furnishing them with money that we had shipped from our stock and they were using the same money furnished them to pay Mr. Tutwiler. There are several member banks in Dothan. That is the only place we had a direct agent, I believe. The process was this: the member bank down there sent to Atlanta and got currency from the Federal Reserve bank, which was charged to it, and the Federal Reserve bank paid the express on it to Dothan. Then this member bank took that currency and turned it over to the State bank, on terms satisfactory to it, and delivered it to the State bank upon whom Mr. Tutwiler had checks for presentation, and the State bank took our own money and paid it. Mr. Tutwiler put it in the express office and sent it back. So we were being paid with our own money, and paying the express charges both ways. I cannot explain why one of our member banks would treat us that way in the interest of a non-member or non-par bank. Mr. Tutwiler took checks for presentation nowhere else. He was sent there because he
332 lived there formerly and the cashier was a personal friend of his. I don't remember the exact date he first started this process. The meeting at which it was discussed by the directors was February 13; so he had been there long enough prior to that for this ring-around-the-rosy to develop, and we found out that we were paying ourself with our own money and paying the express on that money both ways. The items were sent out here in the same manner as those at Quincy, with a letter inviting the remittance at par, and to return them if they did not. I continued him there, although I knew the situation, until this restraining order; we were quite willing to let them have it; we did not want to embarrass them. Prior to the operation of this restraining order, and at the time those Quincy items were being handled and the Dothan items, we had some items coming in from other banks and when those items came back, we used the express company to clean them up; we thought we had incurred liability—where they had been returned as I have explained. Items of that character after the restraining order were taken off the par list and discontinued, unless we had specific instructions from the sending bank to pay exchange. I don't know that they ever made any use of the post-office.

Q. Isn't it true that in all your testimony and your statistics on the subject as to member banks, and banks remitting at par in the Sixth District and the number that are not remitting at par, that you count those on the par list as agreeing, although they are placed there without their consent?

A. We count on the par list those where we have arrangements to collect, either directly or indirectly; we might have arrangements through another bank.

Q. After you made the arrangements, and the injunction was filed, why did you take them off?

A. These were arrangements where we did not have the arrangements with that bank, but were endeavoring to collect.

333 Q. Why did you put them there?

A. We put them there because we were going to collect them the best we could.

Q. You say you put them on the par list whenever you had made arrangements?

A. That is, if we collected through another bank.

Q. Suppose you have sent a representative down there to collect checks?

A. We put him on then.

Q. I will ask you isn't it true that you do not get anything to present until you do put them on the list?

A. We receive Government items, and some items with specific instructions to pay exchange on them and collect. I am familiar with the regulations under which we receive out-of-town checks. They specifically require a bank to agree that we accept it for collection only, and are responsible for nothing except negligence. Then if exchange is paid under instructions we are paying it for the account of the bank who gave us the check. Whether we are instructed or not we are their agent.

Q. If you choose to pay it out of your own pocket, isn't that voluntary; it either belongs to you or the bank you are collecting for; isn't that true?

A. Yes; it belongs to us while it is in our hands.

Q. If it belongs to the bank you are collecting for, and it costs you something to collect it, aren't you acting as agent for your principal?

A. Acting as collecting agent.

Q. Therefore, you are paying out money for the account of your principal?

A. Under his specific directions.

Q. If you will please not add that to your answer and just answer my question.

A. I have got to answer it as I see it. Exhibit C, to our answers to interrogatories, shows items of exchange paid by our bank on collections; the aggregate is more than $2,500 and begins in August, 1919, and runs until August, 1921. The larger number of these items is a volume of checks payable by governmental agencies, and bear on their face the stamp that they are payable as a Government obligation, and should be payable at par. In many instances they would disregard the stamp and deduct exchange regardless of that; we would endeavor to get reimbursement on account of having to pay it, but after having wasted one or two stamps and not be able to collect it, we dropped it. Other collection items are these exchange charges paid, where items were received by us with specific instructions to pay it. Others arose from checks sent out with the letter the latter part of January for the return of items collected through the express company. Those three different matters make up this exchange cost, charged as operating expense. If we handled it for collection under the general clearance plan it did not permit us to pay exchange; but if the bank sends it and instructs us, we do; we pay under their direction and charge it.

Q. If you are acting as their agent, and you told them that you were only going to act as their agent, and it was necessary why wouldn't you charge that?

181
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A. We could not pay that exchange, that is clearance.
Q. That is your interpretation?
A. Yes, sir.
Q. He is not bound to pay any expense in connection with unless the principal asks him?
A. Under the par-clearance plan.

The mere fact that a bank's name appears on the par list does not mean that that bank is voluntarily remitting at par; it means it a bank on which we are able to collect. It does not mean necessarily that it has agreed to it. It does not mean that we are able to do without expense; it may be that we might have to employ an agent or express company and charge as general operating costs. A bank has not voluntarily agreed to remit at par merely because its name appears on this list; it may be through some other channel.

335 M. B. Wellborn.

I am Governor of the Federal Reserve Bank of Atlanta, since March 1, 1919. I am the chief operator of the bank; charged with the operating department of the bank; chief executive officer. I am familiar with the so-called par-clearance campaign. I have never at any time during my incumbency as governor authorized or directed the accumulation of checks upon a non-member—a non-par-remitting bank and their presentation in mass at the counter of the bank for payment. I never authorized anything of that kind. It never occurred to my knowledge. I am the same M. B. Wellborn, one of the parties defendant. As such, I and the other defendants signed these interrogatories, from 1 to 316, propounded by counsel for the plaintiffs. I adopt these interrogatories as my personal testimony, on my corporal oath.

Cross-examination:

Q. Mr. Wellborn, do you recall your answer to interrogatory number six?
A. Yes, sir, I think I am familiar with that.
Q. It is referred to very frequently all through them?
A. Yes, sir.
Q. In that answer you stated that it is the intention of the members of this bank, if it has to present checks for payment to non-member banks, by reason of the refusal of the non-member banks to agree to the plan, to accept either exchange or currency, at the option of the payee bank; do I understand that this is made in good faith and will not be avoided by factious objection to the kind of exchange tendered by the bank; is it the real purpose to let the country bank have its choice the same as if it agreed to remit one hundred cents on the dollar?
A. My idea is to give a non-member par-remitting bank the same privileges as are given to member banks.
336 Q. The same privileges as if it did agree?
A. Yes, sir.

Q. Then how would it affect your plans and methods if the court should enjoin you from refusing to accept the same kind of exchange from the non-remitting bank as from the member bank?

A. Yes, sir. We would not make any distinction between the member bank and the non-member bank.

Q. Then, if you have no intention of making any distinction, it would not interfere with your plans at all, would it?

A. I think not.

Q. Mr. Wellborn, when did you arrive at the conclusion that it would be the policy of this bank in presenting checks to non-par banks for payment at their counter, that you would accept exchange or currency, at their option?

A. I cannot recall any particular dates.

Q. Hasn't it been since this litigation?

A. Yes. Because we had not definitely formulated our plans before this litigation started; I think it was before.

Q. Can you give me approximately the date that you arrived at that conclusion?

A. I think probably it was some time—I would not like to say about the date, because we have discussed it time and time again.

Q. Was it subsequent to the filing of this bill, and before the filing of your answer to these interrogatories? Wasn't it between these two dates? In your answer you do not say anything of that sort.

A. No, when the answer was given—I recall that I was always in favor of doing that.

Q. You did not state that in your answer to the bill in this case?

A. I have always regarded that as the proper thing to do, to accept the exchange or cash.

Q. That was not the policy announced by Mr. Adelson in these letters?

A. No, not altogether, no, sir.

Q. You heard some of them read, where payment was demanded in cash only?

A. He did not say cash only.

Q. I beg your pardon.

A. Did he? I though he said in cash. That is perhaps a trading proposition; he may have said cash, but if they paid in exchange, I think he would have accepted it.

Q. But he said cash only?

A. Even if he did that, I believe it was not intended; I think exchange would have been accepted.

Q. That is your personal belief?

A. Yes, sir.

Q. He was in charge of the par-clearance campaign?

A. Not absolutely; I, as head of the bank——

Q. Let's come down to essentials, fundamentals. Isn't it true, on your corporal oath, that it was the intention to make it so annoying, vexatious and embarrassing to country banks to have to keep cash on hand to pay all checks assembled in your bank, that as the lesser of two evils, that bank would agree to remit at par—

rather than have to keep on hand the amount of cash for that pu
pose?

A. I could not say that; I do not know; that was the first e
perience I ever had in anything of that kind?

Q. Don't you know, as a banker—you were a country bank
yourself once——

A. Yes, sir.

Q. Don't you know that no country bank in the world co
successfully stay in business and be prepared to pay in currenc
over the counter in cash all checks presented?

A. It did not have to pay them in cash.

Q. Just answer the question; can any bank successfully contin
in business if that is required?

338 A. I think that is the trouble—it would perhaps cut dow
its profits to some extent.

Q. Could he successfully do business at all, if he had to ha
money all the time to meet every check; would he not have
keep his entire deposits on hand?

A. Entire deposits?

Q. If he had to pay in cash over the counter every check draw
against him?

A. That is not to be supposed.

Q. Aren't you, or not, willing to admit that it would be a gre
hardship, if it were done?

A. Yes, it would be a hardship. In answering that question, w
do not propose for that to be done.

Q. I understand that; but suppose you did; as between these tw
things—as between having to pay all checks in currency over th
counter, and having to forego their rights to charge exchange, isn't
that the lesser of the two evils?

A. Isn't remitting at par the lesser of the two?

Q. Yes, sir.

A. Yes, I should say so.

Q. Did I understand you correctly, Mr. Wellborn, that the con
clusion you came to and expressed in your answer to the sixth in
terrogatory was arrived at between the time the bill was filed and
the time the interrogatories were answered?

A. You mean the policy of the bank?

Q. Yes, sir.

A. Or my own view?

Q. The policy of your bank?

A. Yes, that policy was decided upon some time this past year.

Q. Your answer was filed some time I think in June; your an
swer was sworn to the 30th day of June, 1921; your interrogatories
were answered about the last of September, I believe?

A. Yes.

Q. Was it between those dates?

339 A. Mr. Smith, there was no definite decision. When this
matter came up, the answers to these interrogatories, we just
answered that question.

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Q. All four of the officers were asked the question, and answered in the same manner?
A. I suppose they took the cue from me, that being the policy; never had any formal meeting deciding upon it.
Q. Then that policy was agreed upon just prior to the time you formulated this answer to question six; not until just prior to that time?
A. That question came up; I had always been in favor of payment in either cash or exchange; you might say the policy might have culminated at that time.
Q. Might have culminated?
A. Yes, sir; you recall Mr Kittles' testimony; I remember we never decided on any particular plan.
Q. You had decided on no plan when on Dec. 11, 1919, you instructed, peremptorily instructed, the officers to proceed?
A. No, sir, it was left to the officers to attempt to work out.
Q. The four executive officers are defendants in this case?
A. Yes, sir.
Q. They answered these interrogatories?
A. Yes, sir.
Q. They all answered exactly the same to question six?
A. Yes.
Q. Am I to understand that what they said in question six was agreed to among themselves just prior to that time, or along about that time?
A. I do not know what they did; but I did myself prior to that time.
Q. You had no conference with the officers about it?
A. No, sir.
Q. No consultation at all?
A. No, sir.
Q. They were ordered to proceed and never conferred? Did you leave it entirely to Mr. Adelson after December 11?
A. No, sir. We were just trying out the plan; we never had any definite plan, from the Federal Reserve Board, or any other of the banks; they did not suggest any plan; this was considered the most difficult district in the Federal Reserve system. I did not know exactly what we were going to do; only this, we tried collecting checks on non-par banks at Dotham, and I do not think we gave instructions when we went down there about accepting cash only; I do not think we did.
Q. When did you go there?
A. In January, 1920.
Q. The 20th of January?
A. No, sir; January, 1920.
Q. He went down there before this bill was filed?
A. Yes.
Q. This bill was the 15th day of January, 1920; he therefore must have been sent down there somewhere between the first and fifteenth of January?
A. Yes, sir.

OSE IN CENTER

Q. Mr. Wellborn, you say you were a country banker once yourself?

A. Yes, sir.

Q. Suppose while you were in the operation of that country bank you had received a letter from a responsible official of the Federal Reserve bank—say the deputy governor of the bank—saying that he expected to put the name of your bank on the par list, thus turning into the channel of the Federal Reserve bank checks on your bank, and that he intended to present them daily for payment in cash over the counter; would you not consider that a-quiescence in the demand or suggestion that you should agree voluntarily not to charge exchange and remit at par would be less hurtful to your bank than to be subjected to the other course of dealing?

341 A. You mean to say do I think it would be less hurtful to the bank to remit at par under our plan, that is furnish the stationery and stamps and so on——

A. Yes, sir.

A. Than to pay cash over the counter every day?

Q. Yes, sir.

A. When the checks are presented?

Q. Yes, sir.

A. Yes, I would consider that the better plan for the bank.

Q. You mean remittance at par would be better than to arrange to pay cash on checks over the counter?

A. Yes, sir; if I had been operating a commercial bank, I would have accepted the proposition.

Q. Mr. Wellborn, I want to ask you whether or not, if the Federal Reserve bank—if you were a country banker, and the Federal Reserve bank was to take all checks received by it as the result of the drawee bank being on the par list, and send a special messenger to the counter of that bank and demand payment in currency over the counter, would you consider that that would be an expensive, embarrassing and annoying process for the drawee bank; or would it be either embarrassing or expensive or annoying, or any two or more of them?

A. I should think it would be to some extent; yes, sir.

Q. What do you mean by some extent?

A. Well, it would cost them more than they could afford to pay.

Q. There would still be some expense?

A. Yes, sir.

Q. And it would be annoying and embarrassing to that bank for a special messenger to walk in with these checks and present them at the counter?

A. I should think it would; yes, sir.

Mr. Randolph: If your honor please, it appears that the witness has testified that the Federal Reserve Bank of Atlanta, which

342 is the defendant here, does not contemplate any such procedure as that outlined in the question asked. If that is not an issue in the case, and the proof is irrelevant to the issue, it does

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t strike me as being relevant to ask a hypothetical question which outside the issue.

The Court: Let me call your attention to the condition of the adings. The bill charges the intention of the Federal Reserve nk to do this thing—present checks over the counter for pay- nt—and that they will do that. The answer to that is that they not intend to do anything annoying and embarrassing to these nks, as charged in the bill; that is as far as the answer goes; I not think it goes any further. There is evidence that they have manded, through letters, before this bill was filed, money over the unter. Now, they want to show that that conduct at the time the l was filed was intended to be as they described in the circular ter. I think that is a part of their case. If there should be a dis- imer in the case, they did not intend any longer to do that, that ght remove the issue from the case. It is simply a denial; it is not disclaimer. The defendants in their testimony say they do not end to do it; they reply you may not now, but it is in your mind, cause you have on previous occasions presented checks and de- nded the cash. If it is put in the form of a disclaimer, it would irrelevant to pursue it further.

Mr. Davis: If it is not in, your honor, we wish to put it in. It pears what the plan is, and we desire to put it in, if not now in.

The Court: So far as the machinery of the court is concerned, they ay change their minds; if you make the disclaimer so that it can used as the basis of any decree which may be entered—let it be e of the admitted facts——

Mr. Davis: Your honor, if the pleadings do not show what the swer to the sixth interrogatory shows, we want to put that in as a sclaimer, the plan outlined in the sixth answer.

Cross-examination resumed:

Q. Suppose that one of the plaintiffs in this case was informed at the defendant expected to employ a special agent in the town ere the bank was located, to whom there would be mailed daily ecks on that bank that came through the Federal Reserve bank, reason of that bank's name being on the par list, whose instruc- ns were that he should present those checks at the counter of that nk and demand payment in currency; would you, or not, con- er that method of collecting checks, if carried out, would prove pensive, embarrassing, annoying, either or both, or all three?

A. My answer is that I think it would be expensive and be an- oying.

Q. And embarrassing?

A. And embarrassing.

Q. Suppose they adopted the method of presenting these checks that way, presenting the checks over the counter through the edium of the express companies; would the effect be the same, em- rrassing, annoying and expensive?

A. I do not think it would be to the same extent as if an agent esented them——

Q. An agent of the express company?
A. Yes, sir——
Q. Suppose they used the post-office?
A. You understand, Mr. Smith, my answers are based on the proposition that we do not propose to do these things?
Q. I understand that; but we are going to argue that you did it; I do not think you ever had any sympathy, personally, with it, that is what we are going to contend. Well, now, about the letter addressed to Mr. D. L. Green, president of the Holmes County Bank at Bonifay, Florida, signed by Mr. Adelson, deputy governor of the Atlanta bank, dated February 16, 1920—after the restraining order in this case was granted, but addressed to this bank in Florida,
344 the original order operating only in Georgia, and there being no pretense that there was any violation of that order—that letter contained the statement: "On account of the large number of non-par remitting banks in the Sixth Federal Reserve District it is not possible for us to arbitrarily commence collections at par on all the banks at one time, and therefore we have to go about it by setting off certain areas to be taken up at a time. As soon as we are able to make necessary arrangements in your city, we will again place the name of your bank on our par list and begin collecting items by presenting them for payment in cash, unless you will advise us that you will remit at par." Now, I will ask you, whether that presentation was to be made through a special agent sent down there for that purpose, or through a resident agent employed for the purpose, or through the express company, or the post-office, as a continuous thing on that bank, whether it would be embarrassing, annoying and expensive to the bank to do that?
A. To pay that in cash?
Q. Yes, sir.
A. It does not say cash only?
Q. Yes, sir; I did not read it all. It says: "Should we find it necessary to arrange to present items at your counter, payment will be demanded in cash only." That is the letter; receiving nothing but cash, regardless of the channel through which it is presented—a continuous performance, with the bank's name on the par list without its consent. State whether or not that would be an embarrassing, annoying and expensive method of collecting checks on the payee banks.
A. Yes, sir; I think so.
Q. And would be expensive, annoying and embarrassing to the Federal Reserve bank also?
A. Yes, sir.
Q. Would it not be very much more expensive than the ordinary rate of exchange?
A. I think so.
345 Q. Would it not be several times more expensive than to send down the checks and pay one-tenth of one per cent?
A. Perhaps so.
Q. Mr. Wellborn, you know Mr. L. R. Adams?
A. I do.

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Q. Of Atlanta?
A. Yes, sir.
Q. You know he is the secretary of the Georgia Counties Bankers Association, and has been since the organization of the association?
A. Yes.
Q. Did you have an interview with Mr. Adams on this subject of par clearance shortly before the bill was filed—at your office at the Federal Reserve bank, where the whole subject was discussed at length?
A. When he was alone?
Q. Yes, sir.
A. I do not recall that; I recall that a committee came to see me and others.
Q. I am referring now to an interview you had with Mr. Adams—knowing his position and relation to the country bankers—in which interview you sought to obtain from him what the attitude of the country bankers would be towards the move then imminent, of placing in operation in the Sixth Federal Reserve District this par clearance scheme—as to what their attitude would be?
A. I do not recall it; that I requested him.
Q. Yes, sir.
A. I do not recall it.
Q. You had a long interview with him, and as a result of that interview, he disclosed to you very clearly that the country banks were going to resist it, and a discussion was had up one side and down the other as to the desirability or its undesirability, and it lasted some time, and at the conclusion Mr. Adams arose and left your office, and you remarked, in substance, Mr. Adams, from what you say it
3946 looks to me like we are going to have a fight over this question; do you recall this conversation?
A. I do not recall it at all.
Q. And didn't he answer, yes, Governor Wellborn, we are going to get ready for the fight right away? You have no recollection of that?
A. No, sir, none whatever; I do not deny it; I do not recall it.
Q. I know that you are a busy man?
A. That interview never occurred with me at all that I can recall; it never come to my mind.
Q. You spoke of the committee coming; who composed that committee?
A. There was a Mr. Benton, a Mr. Harvey of Fairburn——
Q. Just those two?
A. No, sir, I think a man from Douglasville also came.
Q. Mr. Smith?
A. I think Duncan was his name; I am not quite sure.
Q. What organization did they represent?
A. I think—not positively—I think the Country Bankers Association.
Q. Late in December?
A. About that time.

OSE IN CENTER

Q. It was after your form-letter of December 23rd or 24th, was not?

A. I would not say that; I could not say that because we had meeting of our directors and authorized us to put in this par clearance system; it was after that meeting they came; that is my recollection

Q. You do not recall whether the form-letter had gone out then

A. No, sir; I do not.

Q. What was the subject of that interview?

A. They discussed the matter of banks not paying exchange and paying exchange or remitting at par, and that it would be
347 injurious to them if they had to remit at par. I remember the reply I made to them was that a good many small national banks were in the system, and that they were not collecting exchange on remittances, and it was not hurting them; that none of them had gone out of business, not a single one that I know, and did not think that if this went into effect it would affect them materially as they thought.

Q. You admitted it would deprive them of some revenue on exchange?

A. Yes, sir; I did admit that.

Q. In other words, they could be wounded, but not killed?

A. Yes, sir.

Q. Is there anything else in connection with the conversation?

A. No, sir; I think that was the essential points.

Q. Didn't they indicate that the country banks were going to assist your efforts?

A. I do not know that anything much was said about that.

Q. What did they come there for? Did you think they came to compromise?

A. I do not know what they came for; they seemed to want to talk about it; I am willing to talk to anybody about anything, especially when they call on me. I recall Mr. Harvey, or one of them, I do not recall just which one, remarking that he thought this was inevitable, all over the country, and he did not see any use in the country banks opposing what seemed to be inevitable.

Q. That it was better to bow to the inevitable?

A. Yes, sir, as the French say, bow low, if you bow at all.

Q. Now, Governor, I want to call your attention to Exhibit B in this petition; I read from my printed copy the letter on December 24th; I believe our copy is signed by you as Governor; the form letter the vidence shows was sent out to more than one thousand non-par remitting banks. In that letter you explained the situation
348 and stated what the Federal Reserve bank would do to lighten the burden, as to paying postage, etc., and then recounting the progress of the campaign in other portions of the country, and stating that the time has now arrived, when, in justice to the other banks in the country, your banks were going to begin to receive at par checks and drafts presented on any bank in the United States whether a member or not; further on you asked them to join the vast army of par-remitting banks and so on. And then state if

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becomes necessary you would very much regret to be forced to adopt other methods of collection that may prove embarrassing, annoying and expensive to you. You meant what you said then, did you not?

A. As has been shown here that letter was prepared by Mr. Adelson. He was appointed to take charge of this matter; but in reading that letter, before I signed it, I did not attach very much importance to those particular words. My own idea in sending out the letter was to impress upon them the advantages that would accrue to them, the facilities par clearance would afford and get them to accept the invitation to come in. In regrd to those words quoted, I do not attach, as I said before, any significance to them, because I did not intend to embarrass or annoy them, or break them up or anything of that kind, and I am sure our directors did not; I was working through the directors of a bank.

Q. Did you expect the man who received that letter to think you were just bluffing and did not mean it?

A. No; I thought they would see from the letter the idea that we had postponed so long putting it in effect. And now we were prepared to go ahead and do it; I thought a great majority of them would acquiesce, in fact I did not think there would be much opposition to it.

Q. You have answered, here, that Mr. Adelson prepared the letter but that the officers and the executive committee of the bank were consulted with about the letter, the form of the letter and that it was two or three days in the course of preparation, and after it
349 was prepared, it was submitted to the several officers and members of the executive committee; you are a member of the executive committee and an officer?

A. I am chairman of the executive committee.

Q. Some of them were not available the day the letter was written, but as soon as they became available and their approval secured, it was mailed. Governor Wellborn did not write it, but no influence was used at all to get him to sign it; you now say you did not mean what you said?

A. I will not say that. I mean this, however, any departure from the regular order heretofore employed will bring about some change; that is what impressed me in the letter. I think it was ten days or two weeks before these words were called to my attention, by someone outside; said the banks were taking exception to these words. I was really surprised and went back and read the letter to see the view they took.

Q. You never wrote any follow up letter then?

A. No. Things fell so fast and furious that I did not have time.

Q. Didn't you hear read here, letters by the score, from Mr. Adelson, where substantially the same thing was used by Mr. Adelson?

A. I did not keep up with it. I back up anything that Mr. Adelson did.

Q. You are not a man who is in the habit of bluffing, are you?

A. Not to a great extent? I might have taken some lessons in bluffing at one time, but I never accomplished much.

SE IN CENTER

Q. I want to ask you another thing—dozens of letters, certain a dozen—signed by Mr. Adelson and sent out to banks all over the country, in which in addition to other benefits and inducements offered, he states if they would agree to collect checks drawn on banks in the same town, present them across the counter of their neighbor across the street, through the instrumentality of these letters, collections, they could get inside information as to what their neighbor was doing. Did you ever authorize the use of such a letter?

350

A. It was never called to my attention; but I think it is perfectly proper for a member bank to take checks on a bank in the same town and collect them——

Q. You think it is proper to take checks for collection in this way, and get information, clandestinely, about your neighbor bank?

A. I did not say clandestinely; I did not use that word; I think it is always proper to get information in any honorable way, and be posted about your competitors' business.

Q. You think that is honorable and fair?

A. Yes, sir, absolutely. I have had some banks, after another bank became a member, I regretted to have to deprive them of collecting checks. It kept them posted about business in the community, and I hated to take that away from them.

Defendants rest.

Rebuttal by Plaintiffs.

I am tendering, your Honor, in order to show the course of dealing of the Federal Reserve bank with certain banks, a series of remittance letters, with returns therefrom, and the correspondence between the Jacksonville Branch of the Federal Reserve bank, and the Commercial Bank, of Jasper, Fla. It includes three letters under three different dates; one of February 13, 1920, for $709.76, with attached detailed statement as to the items, making up the letter; another letter of February 13, 1920, for $114.76, with an attached statement showing the items making up the amount; and a third letter of February 13, 1920, for $70.83, with the attached detailed statement showing the items making up this amount.

Then, in connection with these letters, the remittance letter or memorandum, from the Commercial Bank of Jasper, making an accounting of these three letters, dated February 14, 1920.

351

These documents have all been submitted to counsel, and there is no objection to them. The letter from the Jacksonville branch to this bank, all three of the letters, are identical, with the exception of the amount, and read as follows:

"GENTLEMEN: "We enclose items amounting to $709.76 on you. Please let us have a draft on your correspondent to cover, giving us the best rate you can, if you feel you cannot remit at par. "Yours very truly, W. G. Wilson, Cashier."

L. R. Adams.

I am secretary of the Country Bankers Association of Georgia, since the organization of the Association.

Q. Mr. Adams, state whether or not before the letter of December 23, 1919, sent out by the Federal Reserve Bank of Atlanta, was promulgated, you had any information as to the intention of the Federal Reserve bank to inaugurate the campaign for par clearance?

A. I did.

Q. When did you get that information?

A. I had a conversation with Mr. Wellborn in his office.

Q. At whose instance?

A. At Mr. Wellborn's request.

Q. He requested you to call on him?

A. He did.

Q. And you had a conversation with him?

A. Yes, sir, quite extensive.

Q. On that subject?

A. Yes, sir, on that subject.

Q. What was his purpose in conferring with you as to the attitude of the country banks?

372 A. It seemed that Mr. Wellborn wanted to know what the attitude of the country banks was going to be when the Federal Reserve bank undertook the enforcement of par clearance in the Sixth District.

Q. He knew your official relation to the country banks of Georgia?

A. Yes, sir.

Q. At the conclusion of that conference, please state in substance what Mr. Wellborn said to you on that subject?

A. As I rose to leave Mr. Wellborn's office after the conference, which lasted quite some time, he said, "Adams, according to what you say we had just as well get ready for a fight."

Q. What was your reply?

A. I said, "yes, that is true, and while you are getting ready we will get ready."

Both sides close.

353 **Interrogatories Propounded by Plaintiffs' and Defendants' Answers.**

IN THE

District Court of the United States for the Northern District of Georgia.

[Title omitted.]

Hollins N. Randolph, Robert S. Parker, Solicitors for Defendants. John W. Davis, Of Counsel.

IN THE

District Court of the United States for the Northern District of Georgia.

[Title omitted.]

Come now, M. B. Wellborn, Joseph A. McCord, L. C. Adelson, and M. W. Bell, the individual defendants named in said bill of complaint, and in response to the interrogatories numbered 1 to 316, both inclusive, propounded to the said defendants jointly, and for a joint and several answer to the said interrogatories say as follows (the several responses and answers hereinafter set out being made by said defendants and each of them as their joint and several answers to the specific interrogatories which bear the numbers set opposite the respective answers), to-wit:

354

Q. 1. Please state your name and business.

A. 1. M. B. Wellborn, Governor, Federal Reserve Bank of Atlanta.

Jos. A. McCord, Chairman of the Board of Directors, and Federal Reserve Agent, Federal Reserve Bank of Atlanta.

L. C. Adelson, Deputy Governor, Federal Reserve Bank of Atlanta.

M. W. Bell, Cashier, Federal Reserve Bank of Atlanta.

Q. 2. How long have you been connected with the Federal Reserve Bank of Atlanta, and in what capacity?

A. 2. M. B. Wellborn has been connected with the Federal Reserve Bank of Atlanta since November 16, 1914; first as Chairman of the Board and Federal Reserve Agent, and later as Governor.

Jos. A. McCord has been connected with the Federal Reserve Bank of Atlanta since November 16th, 1914: first as Governor, and later as Chairman of the Board and Federal Reserve Agent.

L. C. Adelson has been connected with the Federal Reserve Bank of Atlanta since March 1st, 1919, as Deputy Governor.

M. W. Bell has been connected with the Federal Reserve Bank of Atlanta since November 16th, 1914; first as Assistant Cashier, and later as Cashier.

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Q. 3. State whether or not you are one of the parties defendant to the above-stated case.

555 A. 3. All of the foregoing are defendants in the above mentioned case.

Q. 4. Please state in detail your duties in connection with the business of the Federal Reserve Bank and the by-laws under which you were elected or appointed.

A. 4. Article 3 of Section 1 of the By-Laws of the Federal Reserve Bank of Atlanta, reads:

"The Board of Directors shall appoint a governor, one or more deputy governors, a secretary and a cashier and shall have the power to appoint such other officers as the board may from time to time determine to be necessary and appropriate for the conduct of the business of the bank. The office of Deputy Governor, Secretary and Cashier, or any two of them, may be held by one person in the discretion of the board. The officers chosen by the board shall hold office during the pleasure of the board."

The duties of the governor, deputy governor and cashier are as set forth in the following sections of Article 3 of the By-Laws:

"Section Four. The Governor; Subject to the supervision and control of the Board of Directors, the Governor shall have general charge and control of the business and affairs of the bank and he shall be the chairman of the executive committee. He shall have power to make any and all transfers of securities or other property of the bank, which may be authorized to be sold or transferred by the executive committee or by the board. The governor shall have power

556 to prescribe the duties of all subordinate officers and agents of the bank where such duties are not specifically prescribed by the law or by the board of directors or by the By-Laws. The governor may suspend or remove any employee of the bank.

Section Five. The Deputy Governor: In case of the absence or disability of the governor his powers shall be exercised and his duties discharged by the deputy governor, and in case of the absence or disability of the deputy governors, the board shall appoint one of the other directors governor pro tem. The duties of the deputy governors shall otherwise be such as may be prescribed by the board of directors or by the governor. In case the board shall deem that the business of the bank require the appointment of one or more assistant deputy governors, it shall have authority to appoint such assistant deputy governor or governors and shall prescribe and define his or their duties.

Section Seven. The Cashier: The cashier and at least one other officer designated by the board of directors shall have the joint custody of all moneys, investments, and securities of the bank, subject to such rules as the board may adopt for their safety. He shall perform such other duties as may be assigned to him from time to time by the executive committee, the board of directors, or the governor."

The Federal Reserve Agent is appointed by the Federal Reserve Board and he acts as that Board's direct representative. His duties

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are to preside at meetings of the board of directors of
357 Federal Reserve Bank of Atlanta; as a member of the exe
tive committee; to receive for transmittal to the Federal
serve Board applications for membership in the Federal Rese
Bank; to issue to and redeem from the Federal Reserve Bank
Atlanta, Federal Reserve Note currency, pursuant to the terms of
Federal Reserve Act and the Regulations of the Federal Rese
Board.

Q. 5. Are you familiar with the contents of the circular le
dated December 23, 1919, attached as Exhibit B in the bill in t
case?

A. 5. Yes.

Q. 6. If not, please peruse said letter and state what method
collection the Federal Reserve Bank of Atlanta, acting through
appropriate officers and agents, intended to adopt that would pro
embarrassing to the bank to whom said letter was addressed.

A. 6. Neither the Federal Reserve Bank of Atlanta, nor any
its officers had any intention of adopting a method which wou
prove embarrassing, annoying or expensive to the bank in questi
or to any other bank. Neither the writer nor any other officer
the Federal Reserve Bank desired to employ any methods wh
would embarrass, annoy or cause expense to any bank whatsoe
The method in contemplation was simply this: In case a non-me
ber state bank should not be willing to remit in available exchan
at par through the mails for checks sent by the Federal Reser
Bank of Atlanta through the mails for payment, the Federal Reser
Bank, in order to collect such checks in the only other meth
358 available, would forward the checks as and when receive
without accumulation and in the regular course of busine
to an agent or agents located in the same town as the bank on whi
such checks were drawn, or would send one of its own representativ
with the checks in question to such town, such agent to be instruct
immediately to present the checks across the counter for payme
either in the usual exchange at par or in cash for the full amou
thereof, at the option of the drawee bank. In case the drawee ban
refused to pay such check either in such exchange at par or in cas
the agents were to be instructed to have the check protested for no
payment and thereafter return the check to the Federal Reser
Bank of Atlanta.

Q. 7. Answer the same question as to what method of collectio
said bank intended to adopt that would prove annoying to the ban
to whom said letter was addressed.

A. 7. For answer, see answer to question number six. There wa
no intention or desire of annoying or injuring the drawee bank o
any other bank then or now.

Q. 8. Answer the same question as to what method of collectio
said bank intended to adopt that would prove expensive to the ban
to whom said letter was addressed.

A. 8. For answer, see answer to question number six. There wa
no desire to impose upon the drawee bank the expense of providin
currency to meet checks. If the drawee bank wished to exercis

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the privilege of making payment in that manner rather than remitting at par in suitable exchange, that was entirely within the discretion of the bank in question.

Q. 9. Is it not true that you were familiar with the collection of checks on non-member and non-par banks in other districts of the United States?

A. 9. We were and are familiar with the fact that all the Federal Reserve Banks are collecting or endeavoring to make arrangements to collect checks on non-par banks, but as each Federal Reserve Bank exercises the right to formulate its own plans, we are not acquainted with the details of the procedure adopted by the other institutions, except as to the results obtained, which shows that arrangements have been perfected whereby checks drawn upon about 90 per cent of the banks in the United States are being collected at par.

Q. 10. Attach letters or circulars from the Federal Reserve Board addressed to you or other officers of the Federal Reserve Bank of Atlanta, or to said bank in its corporate name, dealing with the subject of collection of checks drawn on non-member and non-par banks.

A. 10. In response, there is attached the copies of letters and circulars called for, marked Exhibit "A."

Q. 11. Is it not true that the method of collection of checks drawn on banks not members of the Federal Reserve system and not agreeing to remit at par was and is to send same to the counter of said bank by some agent or agency of the Federal Reserve Bank and demand payment thereof in currency?

A. 11. We cannot answer this question as to the other Federal Reserve Banks, for each Federal Reserve Bank exercises the right to formulate its own plans. So far as the Federal Reserve Bank of Atlanta is concerned, at the time the restraining order was entered, it was not an assured fact that it would be necessary to appoint special representatives to make presentation of checks at the counters of non-par banks. Some checks were forwarded through the express company for collection, but without instructions as to the manner of payment. Various methods of collection were discussed, among which was one of demanding payment in cash. No definite action, however, was ever taken, on account of the restraining order.

Q. 12. Is it not true that practically all checks on any such banks as are referred to in the preceding question that came into the possession of the Federal Reserve Bank were sent out through such agent or agency to make collection by presenting same at the counter and payment demanded in the aggregate amount called for by said checks and said payment required to be in currency?

A. 12. No. As stated above, some checks were forwarded through the express company, which company made collection in accordance with its own methods of collection, without instructions.

Q. 13. Is it not true that any agent or agency thus delegated to collect any such check or checks was or was to be instructed not to receive in payment thereof anything but currency?

SE IN CENTER

A. 13. No.

361 Q. 14. Is it not true that if any such bank or banks would sign an agreement to remit at par on all checks sent to it by the Federal Reserve Bank through the mail payment of such checks would be accepted by the Federal Reserve Bank in the form of drafts on such bank's reserve deposits in regular course of business? If not, what kind of bank drafts would be accepted in lieu of currency?

A. 14. The answer to question 14 depends upon what is meant by "banks' reserve deposits." If it means that such bank or banks have a deposit with the Federal Reserve Bank of Atlanta, checks drawn upon such a deposit would be accepted in payment of items. If it means deposits with a depository approved by the State Banking Superintendent, checks drawn upon it would be acceptable provided they were collectible at par.

Q. 15. Is it not true that it is more expensive to the Federal Reserve system to collect checks on non-member banks who refuse to remit at par by presentation through special agents or agencies than it would be to pay the current rate of exchange on such checks?

A. 15. We are not advised as to the expense incurred by the Federal Reserve System in the collection of checks through special agents or agencies on non-member banks which refuse to remit at par, and consequently do not know the amount of such expense, as compared with the current rate of exchange demanded by such banks.

Q. 16. Is it not true that this expense is incurred and paid by the Federal Reserve Bank of Atlanta in the prosecution of the campaign by it to enforce par clearance of checks throughout this district? If that is not the purpose in incurring such expense what is the purpose?

362

A. 16. No. The expense so incurred is paid by the Federal Reserve Bank of Atlanta as part of its cost of operation in the carrying out of the provisions of the Federal Reserve Act. There is no other purpose.

Q. 17. Is it not more dangerous and troublesome to collect checks in currency by presentation at the counter of the bank resident outside of Atlanta than it would be to accept a draft of such paying bank on its correspondent in Atlanta or New York?

A. 17. Not necessarily so. It would depend on the collecting method selected and other circumstances, such as the solvency of the correspondent bank either in Atlanta or New York City and the chance of loss in the mails.

Q. 18. Is it not true that if currency is stolen it is difficult or impossible to identify it and make recovery from the thief? Is not burglary or theft insurance carried to protect such losses?

A. 18. Yes.

Q. 19. Is it not true that if the currency is lost or destroyed there is no recourse to recover the loss? Is there any insurance against accidental loss of currency?

A. 19. Insurance is obtainable that covers all loss.

Q. 20. Is it not true that a bank draft on New York or Atlanta

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is identified by number, date, and description, and that in case of loss payment thereof may be stopped by well-known methods and the ultimate amount called for by said check served to the rightful payee or holder thereof?

A. 20. Yes.

Q. 21. Is not the transfer of funds in ordinary banking business ually and ordinarily accomplished through the medium of bank afts on correspondents? If not, what is the usual custom of mmercial banks in transferring funds in the regular course of mmercial business?

A. 21. In the past, the transfer of funds was accomplished mainly rough the physical shipment of currency from point to point. en followed a period of time when the transfer of funds was ac-mplished both by the physical shipment of currency and through e medium of bank drafts on correspondents. However, since the blishment of the gold settlement fund of the Federal Reserve stem as a part of the general clearance system, transfer of funds, th intra-district and inter-district, are made principally through Federal Reserve Banks by telegraph, and accomplished by book ry.

Q. 22. Is not the transfer of currency by express or registered mail exception to the rule of clearing transactions between banks?

A. 22. The transfer of currency by express or registered mail is an exceptional proceeding in connection with clearing transac-ns between banks.

Q. 23. Is not such exceptional method of transferring funds the result of peculiar and acute conditions that take it out of the ordinary course of remittance between banks?

A. 23. No. Shipments of cash are very commonly made.

Q. 24. Is it not true that as between banks, in the absence of in-vency or threatened insolvency of the payee bank, the sending checks by special agents or agencies for collection in currency r the counter is outside the ordinary or usual course of transact-g such business of collection of such checks?

A. 24. The procedure is perhaps not in the ordinary course of siness, but so many collections have been made and are being ne through special agents or agencies that it hardly could be lled unusual.

Q. 25. If the purpose of the Federal Reserve Bank in sending ecks on non-member banks by special agent or agencies when they fuse to waive their rights to charge exchange in regular course of siness is merely to collect the amount called for by such checks d there is no question of solvency of the payee bank, why should ch agent or agency not accept the payment of such check in the nk draft of such payee bank convertible at par rather than in rrency?

A. 25. If there is no question in the mind of the Federal Reserve nk as to the solvency of the paying or drawee bank, there would e no reason why such agent or agency should not accept, in pay-ent for such checks, a bank draft drawn by such bank which is yable at par. Inasmuch, however, as one of the chief purposes of

SE IN CENTER

the collection system of the Federal Reserve Banks is to expe
the collection and final payment of checks, it must have so
365 discretion as to the kind of exchange which it will accept
payment of its cash letter, so that while the drawee ba
would have the option of paying either in cash or exchange, nev
theless, when payment is made in exchange, it must be in the us
exchange not calculated unduly to delay final payment. In ca
that when payment is made exchange, rather than in cash, the
change will be that kind of exchange acceptable to the Federal R
serve Bank in the sense just described, it may be necessary, becau
of the difficulties always in employing agents who are unable to
a final discretion in this matter, to give specific instructions as
what general classes of exchange would be acceptable.

Q. 26. Would not such a method of collection save the hazard
theft and loss of the currency in carrying or returning it to
Federal Reserve Bank if such draft is drawn on an Atlanta bank
New York bank?

A. 26. The acceptance by such an agent of such a check as d
scribed in question 25 would not amount to a "method of colle
tion:" it would amount to a specific instance where a specific age
would act in a certain way with reference to a certain check, a
would not, in any way, involve the matter of hazard or risk in t
transmission of currency.

Q. 27. Is not such a draft as available to the Federal Reserve Ba
in the matter of its reserves and accounting as the currency wou
be?

A. 27. Drafts on Atlanta banks received in time for daily clearin
would be as available to the Federal Reserve Bank, in the matter o
its reserves and accounting, as currency would be. A dra
366 drawn on a New York bank, or on any other point tha
Atlanta, would in no event be available as currency for it
order to collect such a draft it would have to be sent to the point o
which drawn for payment and outside of a Federal Reserve City is
remittance.

Q. 28. Is it not true that the practice of demanding currency on
the counter from non-member banks who refuse to waive their right
to charge exchange is resorted to, or will be resorted to, by the Fed
eral Reserve Bank of Atlanta in order to so inconvenience and di
turb the regular course of the business of such payee bank as to mak
it the lesser of two evils to join the Federal Reserve Bank system o
collection rather than to be subjected to demand of currency on a
payments by it?

A. 28. Emphatically no. The practice of presenting checks ov
the counter of non-member banks for payment would not be for th
purpose of inconveniencing, injuring or disturbing the regula
course of business of such payee bank, but would simply be for th
purpose of performing the clearance functions for member banks
that are contemplated by the Federal Reserve Act.

Q. 29. When the letter of December 23, 1919, was written, wh
other methods of collection that would prove embarrassing, annoy
ing ,and expensive to non-assenting banks were contemplated?

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A. 29. No methods whatsoever were in contemplation for the pose of embarrassing, annoying or making it expensive to non-par banks; the sole idea was to provide the clearing system as contemplated by the Federal Reserve Act. See answer to question No. 6, supra.

Q. 30. Were not such methods to be the same in substance and ct as those adopted in the other districts in which universal par arance had alrady been undertaken? And were not the methods ctically directed from the offices of the Federal Reserve Board Washington?

A. 30. Each Federal Reserve Bank directs its own affairs and the cedure for making possible the clearance system contemplated by Federal Reserve Act was and is entirely within the province ach. There were no directions from the officers of the Federal erve Board in Washington as to what procedure should be em-yed; the Board, in construing the Act, issued Regulations pur-nt thereto, but the administration of the points involved is left ach Federal Reserve Bank, as stated above.

Q. 31. Is par collections an essential part of the Federal Reserve stem?

A. 31. Par collection is an essential part of the Federal Reserve stem as it is now organized and operated pursuant to the terms the present F. R. Act.

Q. 32. Has not the policy been to keep up the fight for par clear-e longer than State banks can stand it and win that way?

A. 32. The Federal Reserve Bank of Atlanta has not had nor w has, any policy except to extend to the banks using its facilities services of collecting all checks at par deposited with it for col-lection as required by the Federal Reserve Act.

Q. 33. Is not the effect of publication of banks' names on the par list to accumulate checks drawn on such banks? not, why not?

A. 33. The effect of the publication of a bank's name on the par tends not to accumulate but to concentrate checks for collection the hands of the Federal Reserve Bank. Such a list gives notice member banks in the System that the Federal Reserve Bank of lanta is prepared to act as the collecting agent of checks drawn on h bank on the par list. But while there may be such a concentra-n of checks in the Federal Reserve Bank of Atlanta from many ferent points in the country, nevertheless, the publication of the r list does not result in any accumulation of checks in the sense t checks are held up from day to day in order to accumulate great mbers of checks before presentation is made by the Federal Re-ve Bank. Any policy of the Federal Reserve Bank which would ult in accumulating or holding up checks from day to day would one which would subject the Federal Reserve Bank to considerable ctical and legal difficulties, since any losses resulting from undue ay in presentation might subject the Federal Reserve Bank to a bility which it could in no event afford to assume. Furthermore ch a practice would be so inconsistent with the general purposes

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of the collection system that it could not be countenanced by
Federal Reserve Bank or the Federal Reserve Board.

Q. 34. State in detail all the different methods of collec
checks through the banks.

A. 34. There are two general methods of collecting checks:
rect and indirect. Direct collection may be through the s
369 ing of checks to the drawee banks for remittance; or, in th
cases where the drawee bank maintains a reciprocal acco
with the sending bank, the latter charges the items to the dra
bank; or by collection through special representatives. Indirect
lection is resorted to in order to avoid the payment of exchange
is accomplished by the bank receiving the items on deposit send
them to some bank which has agreed to handle the items at
which latter institution may themselves route them to another ba
as part of its arrangement to make collection at par, until the ite
finally reach an institution having direct collection facilities.

A clearer idea of indirect collection can be gained from the follo
ing actual happening: There were two banks located in a nearby c
within fifty feet of each other. One was a large institution, the ot
a smaller one. The latter, in order to avoid exchange charges
far as possible, had an arrangement with a bank in Jacksonvi
Florida, for the collection of miscellaneous out of town checks
suburban bank, located not more than four miles away, charged
change for remitting items drawn upon it. The small institution h
a check drawn upon this suburban bank and in order to avoid
exchange charge, sent it to the Jacksonville bank for collection. T
Jacksonville bank, in order to collect the item as economically
possible forwarded it to a bank in Philadelphia, Pa., with which
had an arrangement for the collection of checks. The Philadelp
bank had an arrangement with the large bank, first above refer
to, for the collection of checks on the small suburban bank. T
you see that the check traveled approximately 2,650 miles and w
in process of collection for eight days, although the pay
370 bank was located within twenty-five minutes of the ba
originally receiving it on deposit.

Unfortunately the check was not paid when presented to t
drawee (suburban) bank referred to, with the result that it had to
returned in regular course, first to the large city bank, then to t
Philadelphia bank, then to Jacksonville and then to the institut
located within fifty feet of the bank making the collection for t
Philadelphia institution. Thus the check travelled another 2,6
miles and was outstanding for another eight days, making in
5,300 miles of travel and sixteen days before the original depos
was aware of the fact that the check was unpaid.

Under the Federal Reserve par clearance system, completely e
tablished, if the smaller institution referred to was a full mem
or a clearing member, it could have deposited the check with t
branch of the Federal Reserve Bank of Atlanta that is located in t
same city and the check would have been presented the follow
day and if unpaid and promptly handled by the drawee ban
would be back in the hands of the Federal Reserve Branch on t

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lowing day, with subsequent immediate delivery to the small city nk which is under discussion. In all, this check would have velled approximately eight miles and it would only have been re days at the most in process of collection, unless a Sunday or liday intervened, before the original payee of the check would e known of its non payment.

Q. 35. Is it true that the usual and ordinary method of collecting ecks as between banks is to transmit the same through the mail direct to the bank upon which drawn with request for remittance of proceeds or credit of same to the sending bank?

A. 35. No. There are several methods usually and ordinarily employed in the collection of checks as between banks which e fully described in the preceding answer.

Q. 36. If this method is not adopted, is it not necessary to present h a check for payment at the bank on which it is drawn?

A. 36. If a check is not collected directly or indirectly through the ils, it is necessary to present such a check for payment at the bank which it is drawn.

Q. 37. Is not any method, outside of presentation of out-of-town ecks through the mail, unusual with respect to a bank as to the lvency of which there is no question?

A. 37. We would say it is out of the ordinary but not unusual.

Q. 38. Please state all cases within your knowledge where collion of checks by presentation at counter of a non-resident bank followed as the regular and usual method of collecting checks on t bank when its solvency is not questioned.

A. 38. Wherever there are two banks in a town and checks on one them are sent by an out of town bank to the other for collection, e latter bank will present such checks over the counter for collecn and remittance. Very frequently banks send checks direct for llection over the counter without any regard or consideration to the question of the solvency of the bank. They do so whenever they choose to do it. Also, whenever any disputes arise as to the matter of cost of collection in the way of exchange, banks nd checks for collection over the counter.

Q. 39. How is the usual and ordinary method of collecting checks rough the mail varied or modified by the use of clearing houses?

A. 39. It does away with the necessity of each bank corresponding rectly with every drawee bank upon which it holds an item for colion, and permits items to be routed to a central source for colion with a great saving in time, expense and trouble.

Q. 40. Define and describe a clearing-house.

A. 40. A clearing house association may be defined as follows: An sociation of banking institutions organized for the purpose of fatating the settlement and collection of checks. It has two funcns—one, a daily settlement between banks in the same city—the er, the collection of out of town items for the account of the mems and the resultant settlement through the daily clearings.

Q. 41. Is it not true that the machinery of a clearing-house is ailable only to its members, and that no bank not a member can

LOSE IN CENTER

employ the machinery of a clearing-house except through the operation and aid of a member?

A. 41. Yes.

Q. 42. Describe fully and in detail the method of operation of collection bureau in connection with a clearing-house.

373 A. 42. The collection bureau or country clearing department, as it is more commonly called, is fully described in answer to question 40. The functions of the so-called "Collection Bureau" were indistinguishable from the other functions of a clearing-house. When payment is received from drawee banks covering checks sent for collection, these payments are cleared through the daily settlement.

Q. 43. Is not a collection bureau given the privilege of a membership in the clearing-house for the purpose of conducting its collection business?

A. 43. We are not familiar with all of the clearing-houses in the United States and for that reason cannot specifically answer the question. In every clearing-house the service is rendered directly to the members thereof in relation to miscellaneous checks, whether such checks are drawn on the members of the clearing-house or not.

Q. 44. Where a collection bureau operates in connection with a clearing house, does it not distribute the cost and expense of collection to the banks for whose account collections are made by it?

A. 44. Yes. That is true, except with reference to the clearing-houses established by the Federal Reserve Banks. The Federal Reserve Banks render these services free of cost or expense—that is, they absorb the same.

Q. 45. What control, influence, or effect has the Reserve Board had upon the appointment of officers of the Federal Reserve Bank of Atlanta? Give full details as regards each officer in said bank.

A. 45. None.

374 Q. 46. What practical or actual difference is there between the control exercised over the policies of the Federal Reserve Bank of Atlanta by the Reserve Board and that which would be the case if the Reserve Board was the actual board of directors of said bank?

A. 46. The Federal Reserve Board exercises no direct influence or control over the policies of the Federal Reserve Bank of Atlanta. Under the provisions of the Federal Reserve Act, the Federal Reserve Board is given general supervisory powers over the Federal Reserve System. The difference between the functions of the Federal Reserve Board and the functions of the Board of Directors of the Federal Reserve Bank of Atlanta is analogous to the distinction which exists between the functions of the Comptroller of the Currency and the functions of the several Boards of Directors of the National Bank in the country. The practical and actual difference between the policies and functions of the Federal Reserve Board and the policies and functions of the Board of Directors of the Federal Reserve Bank of Atlanta may be ascertained by reference to the Federal Reserve Act and the By-Laws of the Federal Reserve Bank of Atlanta.

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Q. 47. Is there any matter of any kind upon which the directors of the Federal Reserve Bank of Atlanta may pass and not have their acts subject to revision or review by the Reserve Board? If so, what?

A. 47. None of the regular daily transactions of the Federal Reserve Bank of Atlanta, made in conformity with the provisions of the Federal Reserve Act, and the Rules and Regulations issued pursuant thereto, are subject either to revision or review by the Federal Reserve Board, unless either the law or the Board's Regulations specifically require such action.

Q. 48. What general policy has the board of directors of the Federal Reserve Bank of Atlanta ever adopted and followed out on their own initiative and without let or hinderance from the Reserve Board?

A. 48. All of the general policies inaugurated by the Federal Reserve Bank of Atlanta are initiated, promulgated and put into effect by its officers, under the general direction, control and supervision of its Board of Directors. The Federal Reserve Board simply supervises the execution of these policies, to see to it that they conform to the provisions of the Federal Reserve Act and the Regulations promulgated by the Board.

Q. 49. Has not defendant L. C. Adelson been the most aggressive officer of the Federal Reserve Bank of Atlanta in the campaign for the enforcement of par clearance in the Sixth Federal Reserve District?

A. 49. No.

Q. 50. Under what circumstances did said Adelson come to Atlanta as an officer of the Federal Reserve Bank of Atlanta?

A. 50. He was elected by the Directors of the Federal Reserve Bank of Atlanta.

Q. 51. At whose instance was he elected or appointed to the office he now holds?

A. 51. On the recommendation of the Governor of the Federal Reserve Bank of Atlanta.

Q. 52. Attach to this answer the letter or letters, telegram or telegrams, of instruction concerning the election or appointment of said Adelson as deputy governor of the Federal Reserve Bank of Atlanta.

A. 52. There were no such letters or telegrams.

Q. 53. Was any pressure or influence by Mr. W. P. G. Harding or the Federal Reserve Board used to have Adelson elected as deputy governor? If, so what? Would he have been elected without such influence?

A. 53. No. Mr. Adelson was elected without any pressure or influence exerted by Mr. W. P. G. Harding or the Federal Reserve Board. He was known personally to members of the Board of Directors of the Federal Reserve Bank of Atlanta and his qualifications and fitness for the position to which he was elected were well known to the Board of Directors personally. He was elected because of his well recognized qualifications and experience to serve as an officer in the capacity to which he was elected.

Q. 54. Who was the real author of the letter of December 2[3], 1919, which contained the phrase "Annoying, expensive and em-barras-ing?"

A. 54. Mr. Adelson.

Q. 55. Who was consulted with respect to the contents of the letter of December 23, 1919, attached to the bill in this case as Exhibit B?

A. 55. The officers and the Executive Committee of the Bank.

Q. 56. How long was it in course of preparation?

A. 56. Two or three days. After it had been prepared, it was submitted to the several officers and members of the Executive Committee. Some of them were not available the day the letter was written. As soon as they became available and their approval secured, it was mailed.

377 Q. 57. Under what constraining influence or compulsion was it written?

A. 57. None.

Q. 58. Did Governor Wellborn write it? What influence, if any, was used to get him to sign it?

A. 58. No. No influence whatever was used to get Mr. Wellborn to sign it.

Q. 59. What member or members of the Federal Board knew of it in advance of sending it out? Did he or they approve?

A. 59. No member of the Federal Reserve Board knew anything about the letter. They were not consulted and their approval was not considered or obtained.

Q. 60. Did the Federal Reserve Bank of Atlanta ever refuse, or do you know of any other Reserve Bank that ever refused, to accept exchange drafts from a solvent bank which was on the par list when tendered in payment of checks drawn upon it? Name any such bank whose draft was refused and when and by whom.

A. 60. The usual practice of the Federal Reserve Bank of Atlanta, under the circumstances stated, is to accept an exchange draft when tendered in payment of checks sent by the Federal Reserve Bank of Atlanta for collection. When such drafts are received from member banks, immediate or deferred credit is given in accordance with the circumstances. If the draft is one of "immediate availability," immediate re-serve credit is given, but if it is not a draft of "immediate availability," reserve credit is given only in accordance with the time schedule. When such drafts are received from a

378 non-member bank, they will be accepted in payment of the checks which have been sent for collection, if collectible at par. In the case of the non-member bank, the draft is accepted in lieu of payment of the checks sent for collection, while in the case of the member bank, the draft is not so accepted and consequently can not be immediately counted as reserves, unless it is a draft of "immediate availability". We are not familiar, in detail, with the practice of the other Federal Reserve Banks with respect to this matter.

Q. 61. If the demand for cash settlement is for the honest purpose of mere collection, why is a bank allowed to pay in exchange if it will agree to remit at par thereafter?

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A. 61. As stated in our answer to question No. 6, supra, where a bank is unwilling to remit at par through the mails, it is proposed to demand satisfactory exchange at par drawn on a solvent bank, or cash.

Q. 62. Is such a demand not for the purpose of forcing that bank to agree to remit at par? If not, what is the purpose? State fully.

A. 62. The sole and only purpose of the Federal Reserve Bank of Atlanta in the matter in question is to render to its member banks and to its clearing member banks depositing checks with it for collection the service of collecting the checks at par, as contemplated by the provisions of the Federal Reserve Act.

Q. 63. Who among the officers and directors of the Federal Reserve Bank of Atlanta has advocated the idea of demanding cash in payment thereof as a means of collecting checks on non-member banks at par?

359 A. 63. All of the officers and some of the directors of the Federal Reserve Bank of Atlanta have from time to time discussed the plan of demanding cash as a means of collecting checks on non-member banks at par, and some of them have, at one time or another, advocated that plan. Others of the officers and directors have discussed and advocated the plan of leaving it to the express company or representatives of the Federal Reserve Bank, as the case might be, to determine whether to accept drafts or to demand cash. As a result of these conferences, it has been finally decided to adopt the method of collection described in our answer to question No. 6, supra. The Federal Reserve Board, under the provisions of Sections 13 and 16 of the Federal Reserve Act, directed the Federal Reserve Bank of Atlanta to act as a clearing house for its member banks. Pursuant to this direction and acting in accordance with the provisions of the Federal Reserve Act, the Federal Reserve Bank of Atlanta undertook to collect at par for its member and clearing member banks all checks on banks within the Sixth Federal Reserve District. The non-member banks of the Federal Reserve Bank of Atlanta were advised of the purpose of the Federal Reserve Bank of Atlanta, and were courteously and respectfully requested to remit for checks sent them for collection without the exaction of so-called "exchange charges," full explanation being made to such banks of the fact that, under Section 13 of the Federal Reserve Act, the Federal Reserve Bank could not pay exchange charges. The banks in question were further advised that, if they would voluntarily remit for checks sent them without exacting "exchange charges," the Federal Reserve Bank of Atlanta would stand the cost of postage and
360 would absorb the shipping charges, in case they preferred to send currency. They were also invited to open a clearing account with the Federal Reserve Bank of Atlanta under the provisions of Section 13 of the Federal Reserve Act, as amended, as a result of which they would enjoy the same collection privileges as a regular member bank. A large number of the banks in the Sixth Federal Reserve District, which were not members of the Federal Reserve Bank of Atlanta, voluntarily agreed to remit for checks sent them for collection without the exaction of so-called "exchange charges."

LOSE IN CENTER

Many of such banks, however, were not willing, for one reason or another, to remit for such checks without exacting so-called "exchange charges." In such cases, the Federal Reserve Bank of Atlanta was compelled to resort to other lawful methods of collecting such checks, in order to render the required service to its member banks, but before any general plan could be put into effect, the restraining order in this suit was issued.

Q. 64. What is the relative cost of presenting checks at the counters of banks for payment in cash as compared with the customary rate of exchange for remitting the proceeds for such checks?

A. 64. we have had no experience in presenting checks at the counters of banks for payment in cash sufficient to determine the relative cost of such presentation and collection as compared with the customary rate of exchange charged for remitting the proceeds through the mails. We have no statistics available to use in forming any judgment upon the subject. It would seem, however, that the question of relative cost would depend entirely upon the
381 circumstances, such as the volume of checks collected by a given agent, the compensation paid such agent, and on the other hand, the amount of the charges assessed. It is quite obvious that the uncertain elements render a comparison practically impossible.

Q. 65. By which one of the twelve Federal Reserve Banks was the method of collecting checks by presentation at the counters of banks and demanding payment in cash first adopted?

A. 65. We do not know either of our own knowledge nor upon information and belief.

Q. 66. What differences were there among the members of the board of the Atlanta Bank as to the interpretation of the act as to collecting checks on non-member banks?

A. 66. None.

Q. 67. Whose interpretation was finally adopted?

A. 67. The unanimous interpretation of the Board of Directors.

Q. 68. What members of the board, if any, protested?

A. 68. None.

Q. 69. What pressure, if any, was brought on such members to make them fall into line and acquiesce?

A. 69. None.

Q. 70. Why did L. M. Pool resign as a director of the Federal Reserve Bank of Atlanta, or of the New Orleans Branch thereof? Between what dates did he serve and how and by whom was he appointed or elected?

382 A. 70. Mr. L. M. Pool did not resign as a director of the Federal Reserve Bank of Atlanta, or of the New Orleans Branch thereof. He served out completely the term for which he was appointed. He was appointed on the first day of July, 1919, to serve for the remainder of the calendar year, and upon the completion of his term he was not reappointed. He was appointed by the Federal Reserve Board.

Q. 71. Attach a copy of his resignation and of any letter from him on the subject; also any letter to him from the Federal Reserve Bank

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of Atlanta on that subject. If he did not resign, how was his directorship terminated?

A. 71. We have no copies of letters from Mr. Pool. There was no letter of resignation from Mr. Pool addressed to the Federal Reserve Bank of Atlanta. His directorship terminated by completion of the term for which he had been appointed.

Q. 72. When and upon what occasion have members of the Board of the Federal Reserve Bank of Atlanta, privately or in board meetings, complained or protested against being ruled, controlled, and dominated in all things by the Federal Reserve Board?

A. 72. We know of no such complaints or protests either of our own knowledge or upon information and belief.

Q. 73. Please give the names of any such member or members of the board who thus protested.

A. 73. None of them ever protested, so far as we know.

383 Q. 74. What was the nature of their protest? If it was in writing, attach copy thereof.

A. 74. There was no protest.

Q. 75. State the result of any such protests.

A. 75. There were no results, because there were no protests.

Q. 76. Have you named every member of the board who thus protested?

A. 76. None of them ever protested.

Q. 77. Please give the names of the members of your board, and upon what occasions, who have compared themselves in effect with "rubber-stamp" directors and figureheads, insofar as having any direction of the affairs of the Federal Reserve Bank of Atlanta was concerned.

A. 77. We do not know of any such members.

Q. 78. Please name one single commodity the price of which has been reduced anywhere in the United States by reason of withholding exchange charges for the collection of the checks of the dealer in such a commodity.

A. 78. The elements of cost to the producer of any goods are so numerous, complicated and varied that it would be impossible for any one to say directly that the great reduction in prices throughout the United States in the past year or so could be attributed specifically to the elimination of exchange charges, but it may be reasonable to assume that the great saving to business in the elimination of the exchange charge is one of those elements which does go to make up the cost of production upon which the retail price is ultimately based.

384 Q. 79. Has it affected the price of a barrel of flour anywhere in the United States that you know of?

A. 79. We cannot say.

Q. 80. Has it reduced the price of a pair of shoes anywhere in the United States that you know of?

A. 80. We cannot say.

Q. 81. Has it made a suit of clothes cost any less anywhere in the United States that you know of?

A. 81. We cannot say.

LOSE IN CENTER

Q. 82. Does it not profit city banks at the expense of country banks?

A. 82. No.

Q. 83. Attach copies of all letters sent out seeking local agents to present checks on non-par and non-member banks.

A. 83. We cannot recall that we ever sent out any such letters and find none in our files.

Q. 84. What negotiations were made with insurance companies for bonds and insurance on these local agents?

A. 84. None, except preliminary inquiries as to rates and the character of such insurance.

Q. 85. Where you prepare to collect checks on non-par and non-member banks by presentation and demanding currency, do you not provide for fidelity insurance on the agent you select for this purpose?

A. 85. We had not completed preparations for the collection of checks on non-member and non-par banks by presentation and
385 demand across the counter, so that the question of fidelity insurance had not become a factor. The whole matter was in the making at the time this suit was brought.

Q. 86. Do you not also provide for insurance against robbery, hold-ups, and theft? If so, why do you make these precautions?

Q. 86. Yes. Such insurance is usually taken out as a matter of business prudence, and covers any and all loss incurred in our banking operations.

Q. 87. Is it not due to the risk and hazard of carrying large amounts of currency on the person of your agent from the paying bank either to the Federal Reserve Bank direct or to some office where the same can be deposited or transported to destination?

A. 87. Yes. It is considered prudent by us to provide insurance against such a risk.

Q. 88. Would not all such arrangements be wholly unnecessary if such checks were collected in the regular course of business through the mails?

A. 88. No, it would not be unnecessary, because in many instances the drawee banks might prefer to remit in currency. We are receiving currency shipments every day in payment of letters and for credit.

Q. 89. Would not the Federal Reserve Bank of Atlanta be relieved of all such expense in case it declined to accept for collection, and declined to act as collecting agent of, all checks drawn on banks that were not members of the Federal Reserve system and that would not agree to remit at par?

386 A. 89. Yes, so far as checks drawn upon such non-member banks are concerned, for there being no business with such banks, there would necessarily be no expense in connection therewith. So far as non-member banks are concerned which do remit at par, it would be necessary to take such protective steps, since in many instances the drawee bank might desire to remit in currency. We are receiving currency shipments every day in payment of letters and for credit.

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Q. 90. What preparations of the character above indicated were in progress when the temporary restraining order was served upon you in this case?

A. 90. We were engaged at the time upon the matter of determining just how we would serve our member banks in this department of our business. We were considering whether we would avail ourselves of the service of the express company or would appoint a special representative in the town where the drawee banks are located. We were considering whether we would put the agents under a fidelity bond but that is as far as our preparation had gone.

Q. 91. If your intentions with regard to enforcing par clearance in the Sixth Federal Reserve District were not to adopt methods outside of the usual collection methods and were not substantially as charged in the bill, state how the restraining order in any manner affected your conduct in the premises. State fully.

A. 91. We were advised by our Counsel that the restraining order had no effect on our plans, except relative to the banks which were parties to the suit, and as to these, our Counsel advised us that we should do nothing further, so far as collecting checks on such banks was concerned, until the several points raised by the case had
387 been determined. Inasmuch as the non-member banks in question were unwilling to remit through the mails at par, and inasmuch as, under the Federal Reserve Act, we are disabled from pay- the "exchange charges" demanded by said banks, the effect of the restraining order was necessarily to prevent the Federal Reserve Bank of Atlanta from undertaking the collection of any item drawn upon such banks which it could not collect at par through the mails, or through correspondent banks.

Q. 92. To what extent does the Federal Reserve Bank of Atlanta compete with its member banks engaged in commercial banking in the City of Atlanta in the collection of items other than checks?

A. 92. The Federal Reserve Bank of Atlanta undertakes to and does collect what are commonly known as purely collection items, namely, bills of lading drafts, notes, bills of exchange, trade acceptances, mortgages, coupons, bonds, and any and all other purely collection items. This service it renders for member banks of the entire System. Likewise and similarly the member banks in the Sixth Federal Reserve District avail themselves of the services of the other Federal Reserve Banks in similar collections, if they choose to do so.

Q. 93. Does not the Federal Reserve Bank of Atlanta collect and remit proceeds direct to the senders of drafts drawn against shipments with bill of lading attached?

A. 93. No. In such a case the Federal Reserve Bank of Atlanta either credits the account of its own member bank from which the draft was received or in the event that the draft is received from another Federal Reserve Bank, or one of its member banks, it credits the account of that Federal Reserve Bank, and makes payment therefor through the Gold Settlement Fund. These are the only
388 ways in which they can receive such bill of lading drafts.

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Q. 94. Does not the Federal Reserve Bank of Atlanta g this where the drawee of such drafts is willing to come, or send the Federal Reserve Bank of Atlanta for the purpose of paying s drafts?

A. 94. The Federal Reserve Bank of Atlanta presents by runn to drawees located within a certain area of the city bills payable up presentation. The drawees of drafts payable upon arrival of goo and the makers of time bills are notified by mail or telephone. connection with bills payable upon presentation, the drawees who a located outside of the collection area are notified either by telepho or through the mails. Bills subject to protest, which have not be paid either to the runner or at our counter, are of course, presente by a notary at the place of payment designated in the bill. This what we understand to be the general practice in commercial banks In any event, the remittance is handled as stated in the previou answer.

Q. 95. Have you not been told by one or more of such drawees Atlanta that it was not incumbent upon them to come to your ban to pay such drafts, but that the same should be presented at the office, as is usual and customary by collecting banks, and that if yo would send such draft to one of the Atlanta banks same would b paid on presentation, and that if you would not be willing to giv the matter this direction you could return the draft?

A. 95. Yes, we think we can recall that one or more such drawee have made such statements as are contained in this question.

389 Q. 96. Have you not under such circumstances returned the draft unpaid to the sender rather than transmit it to one of the commercial banks of Atlanta for collection and remittance in the regular course of business? Please gives the names of any such dealers in Atlanta.

A. 96. Usually such items as these are sent to us with instructions how to proceed in the matter of making collection. These instructions were invariably followed. If a draft was sent to us with instructions to present to the drawee and he made request that it be transmitted to some one of the commercial banks in Atlanta, we would comply with those instructions if they corresponded with the instructions we had received from the bank which sent us the item for collection; otherwise we would not, because in every case we have to comply with the instructions of the bank from whom we receive such items.

Q. 97. Has the practice or situation described in questions 93 to 96, inclusive, existed at any time from January 1, 1920, to the present time? If it did exist and it has been discontinued, state when and why.

A. 97. The practice still exists.

Q. 98. Even under the par clearance system, has it not been the universal custom of commercial banks to charge exchange for the collection and remittance of proceeds of commercial drafts drawn to cover the purchase price of commodities shipped on order-notify bills of lading?

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A. 98. Yes. That is our information. But that has no relation whatever to the par clearance of checks payable upon presentation, since a check is defined by the Negotiable Instruments Law to be a bill of exchange drawn on a bank, payable on demand, and a bill of exchange is defined as an instrument which must be for payment in money only, and under the ordinary commercial practices and the decisions of the courts exchange is not money and is only acceptable in payment of a check at the option of the holder thereof. The charges made by the banks for the collection of commercial drafts are charges for the service rendered in presenting, collecting and remitting drafts which are drawn by individuals or corporations other than themselves, and have no relation to the payment of checks drawn upon themselves.

Q. 99. If you have no personal knowledge of such a transaction, please examine your records before you answer this question number 98.

A. 99. We have examined our records and the answer made to question 98 is correct.

Q. 100. What is meant by the word "float" in connection with the collection of bank items?

A. 100. The time which elapses between the deposit of a check drawn upon an out-of-town bank and its ultimate collection is usually referred to as the time when that item is in "float." The aggregate of all such items constitutes the "float" in the country on any particular day. It may be described as items in process of collection, for which immediate credit has been given at the place of the origin or deposit.

Q. 101. Prior to the collection system of the Federal Reserve Banks how was the float carried and who carried it?

A. 101. Prior to the collection system of the Federal Reserve Banks, the "float" was carried by the bank of original deposit, which had given immediate credit for the item. Since the collection system of the Federal Reserve Banks was inaugurated, the Federal Reserve Banks carry such part of the "float" as arises by virtue of checks not being collected within the time specified in their respective time schedules, due chiefly to delay in the mails or other causes beyond their control.

Q. 102. What charges, if any, are made by member banks as a condition to immediate credit on collection items by reason of the float?

A. 102. A charge equivalent to interest for the use of the money between the date of the deposit and the usual, ordinary and estimated time it is required to collect a particular item and make the same available for the credit of the member bank in reserve account. Some banks absorb these charges entirely. Other banks absorb them for particular customers.

Q. 103. Were not all charges for the immediate use or credit of money involved in collection items covered by exchange charges prior to the adoption of deferred credits by the Federal Reserve Banks under their present system?

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A. 103. Yes, the so-called "exchange" being made up of two ele-
ments—one representing the interest for the use of the money wh
the item was being collected, and the other, an arbitrary charge
offset the charge for remittance made by the drawee bank.

Q. 104. What is the average amount in the float for the ye
1920 for the defendant reserve bank and for the Federal Reser
system?

A. 104. There is no such thing as an average amount in th
"float" for the year 1920, either for the defendant Reserve Ba
or for the Federal Reserve System. The "Float" of any particul
day is a matter which automatically clears itself within a
392 few days and there is no way to ascertain an average amou
on any given day.

Q. 105. What was the average number of days this avera
amount was afloat during the year 1920?

A. 105. It is impossible to say.

Q. 106. Is it not a necessary effect of withholding credit fo
items in the float to withdraw that amount of money from credi
that would be otherwise available?

A. 106. When credit for items is withheld until the items ca
be collected, there is no "float." When reserve credit is defer
for the time involved in the collection of items deposited with th
Federal Reserve Bank, the "float" does not withdraw that amou
of credit, as the depositing bank is still getting the use of the fun
represented by its own depositors' checks that are sent to out-of-to
creditors and are in process of collection. It should be remem
bered that the Federal Reserve Bank does not charge to the reser
or collected balance accounts of drawee banks the amounts of check
drawn upon such drawee banks that are received during a give
day, a reasonable length of time for the checks to reach the drawe
bank and for prompt return remittance to be sent to the Federa
Reserve Bank being allowed.

Q. 107. Is it not true that all the twelve Federal Reserve bank
have private telegraph wires for communication between themselve
and the Federal Reserve Board at Washington?

A. 107. Yes.

Q. 108. Are such private wires installed also in each of th
branches of each of the Federal Reserve banks?

A. 108. All but two branches have private wires.

393 Q. 109. Does not the Federal Reserve Bank at Atlan
have a private telephone wire from Atlanta to Washing
for the purpose of communicating with the Federal Reserve Board b
telephone through its own private operators?

A. 109. No.

Q. 110. Is it not true that through telephone and telegraph co
munications over private wires all the Federal Reserve banks an
their branches are in constant communication with each other an
with the Federal Reserve Board from day to day as business may re
quire, and is it not true that as to all matters of importance eac
Federal Reserve bank is familiar with the policies and methods o
every Federal Reserve bank in the system?

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A. 110. All the Federal Reserve Banks and their branches are in nstant communication with each other and with the Federal Re- ve Board from day to day as business may require. It is not true at as to all matters of importance each Federal Reserve Bank is miliar with the policies and methods of every other Federal Re- ve Bank in the System.

Q. 111. Are not these policies dictated by the Federal Reserve ard from Washington from time to time?

A. 111. The Federal Reserve Board is charged by the Federal Re- ve Act with certain duties, which it carries out, and, where it is propriate it communicates its decisions to the Federal Reserve nks. It is true that pursuant to the provisions of the Federal Re- ve Act, some of the general policies are suggested by the Federal serve Board. The execution of such policies, however, is left to e individual Reserve Banks themselves. The Federal Reserve Board does not dictate the policies. It administers the Fed- eral Reserve Act and issues regulations pursuant thereto. It advises and assists the Federal Reserve Bank but it does not ictate to them.

Q. 112. If not so dictated, are not such policies adopted from nferences or consultations by and among the Federal Reserve ard and representatives of all Federal Reserve Board-?

A. 112. See answer to question 111.

Q. 113. Before the present campaign for the installation of uni- sal par clearance was inaugurated was there not a general con- ence on the subject between the governors of the several reserve nks and the Federal Reserve Board?

A. 113. There was no particular general conference called on e subject of par clearance. That matter was discussed in numer- s conferences, along with numerous other matters which came up r consideration. The Governors of the several Federal Reserve nks meet at intervals to discuss such matters as may be brought for consideration and attention.

Q. 114. If so, where and when was that conference held?

A. 114. See answer to question 113.

Q. 115. Was it not determined at that conference that the in- llation of this system of par clearance would be put into effect one Federal Reserve district at a time?

A. 115. No.

Q. 116. Was it not determined that the installation of this par- clearance system would be put into effect in one State at a time or the fraction of a State within a given district at one time?

A. 116. No.

Q. 117. If the State was divided between two districts, was the stem inaugurated in the fraction of the State in each district or as it inaugurated in the whole State by concerted action between e Federal Reserve banks for the two districts in which the State as divided?

A. 117. No.

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Q. 118. Was not the inauguration of the effort to put into ef the system of universal par clearance inaugurated and prescribed one district at a time or within the district in one State at a time the result of a general conference?

A. 118. No.

Q. 119. Has that not been the practice of the Federal Reser banks in all the districts? If such has been the practice, was not the result either of conference with, or instructions from, t Federal Reserve Board?

A. 119. No.

Q. 120. Please explain fully why it is necessary for the Fede Reserve Bank of Atlanta to inaugurate any harsh and irregu methods of collecting checks on non-member banks.

A. 120. The Federal Reserve Bank of Atlanta has not at any ti inaugurated any harsh or irregular method of collecting checks non-member banks nor does it propose to do so. The Contemplat methods of collecting checks on banks which are unwilling
396 remit through the mails at par is set out in full in our answ to question No. 6, supra.

Q. 121. Why cannot the clearing house functions of the Fede Reserve Bank of Atlanta be exercised in a simple, practical, orde way, entirely within the bounds and provisions of the Federal R serve act, by paying for and on account of the bank depositing t checks the usual and customary exchange charges, just as any ot collecting agent would do? Answer the same question with regard to the prohibition of the Federal Reserve act prohibiting change charges against Federal Reserve banks.

A. 121. This question cannot be answered without regard to th provisions of the Federal Reserve Act, so many of which relate to t collection of checks at par, or prohibit the payment of exchan charges. If, however, the whole structure of the Federal Reser Act were amended, and permitted the payment of exchange charg it would be possible for the Federal Reserve Bank to pay suc charges and recover the amount thereof from their depositing mem ber banks. It is believed, however, that were the Federal Reser Banks permitted to pay exchange charges the result would be t establishment of a universal exchange charge, not only on the pa of the small country banks, but on the part of the larger city banks as well. In consequence few banks would derive any advantag from such an arrangement as they would all have to pay, as well a collect, unless each bank charged its depositing customers for th out of town checks collected by it. While that is now done whe required by the large clearin ouse associations, it is not at t likely that it would be ble or feasible in the country sec
397 tions, where competition would make it unprofitable. Th ultimate result would probably be a net loss to the country banker.

Q. 122. In the light of the inhibition of the Federal Reserve a that "no such charges shall be made against the Federal Reser banks," how do you distinguish charges for exchange on checks o

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n-assenting non-member banks from charges for the services of nts or other agencies for the collection of such checks?

A. 122. The distinction is entirely a matter of statutory construction. Sec. 13 provides in part—"but no such charges shall be made inst the Federal Reserve Bank." As the words "such charges" er only to exchange charges made for the remittance of checks rable on presentation, it is obvious that the prohibition in question s not and cannot refer to the expenses of the agents incurring in king collection as contemplated. The Federal Reserve Banks doubterly have authority to meet all the necessary expenses incinal to carrying on their operations under the Federal Reserve Act.

Q. 123. Do not the regulations of the Federal Reserve Board pro- e that all expenses of the Federal Reserve banks, as collecting nts for member banks, shall be charged to and paid by the bank whose account the service is rendered?

A. 123. No.

Q. 124. Were not collection charges made for this service against member banks by the Federal Reserve banks until a time was ched when the profits of the Federal Reserve Banks had grown to h an extent that this charge was voluntarily waived? Do you not ow that this was the course pursued in the Fifth Federal Reserve District, as testified to by Mr. Pepple, vice-governor of the Federal Reserve Bank of Richmond, in the trial of the North Carolina case at Charlotte, N. C., on the 22d of June, 1921?

A. 124. The main purpose of the institution of the plan of par collection was to have the Federal Reserve Bank render this service to member banks with the least possible cost. Originally a small collection charge was made to cover the actual expense incurred. At t time, however, it was believed that the Federal Reserve Banks uld ultimately be able to absorb the entire expense. The banks, er several years of operation, did reach a condition where they were le to absorb this expense, and at the present time they are absorbg the entire expense. We have no information as to what course s pursued in the Fifth Federal Reserve District and no information to the testimony of Mr. Pepple.

Q. 125. Is it not true that the exchange charges paid on the items forth in paragraph 7 of the amendment to the original bill in this e of March 24, 1920, were charged to the member bank for whose count such collections were made, or deducted from the proceeds of d items?

A. 125. No.

Q. 126. If not, were not such charges prepaid by the bank for se account collections were made?

A. 126. No.

Q. 127. Please state the different classes of directors of the Fedal Reserve Bank of Atlanta; how and by whom they are selected and elected to office.

A. 127. Class "A," Class "B," Class "C." Classes "A" and "B" directors are elected by the member banks. Class "C" rectors are appointed by the Federal Reserve Board.

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Q. 128. Please give a list of the present board of directors of t Federal Reserve Bank at Atlanta and the class to which each belo together with his residence address.

A. 128. Class "A": Oscar Newton, Jackson, Mississippi; Jno. Ottley, Atlanta, Georgia; P. R. Kittles, Sylvania, Ga. Class "B J. A. McCrary, Decatur, Ga.; W. H. Hartford, Nashville, Tennes Leon C. Simon, New Orleans, La. Class "C": E. T. Brown, Atla Ga.; W. H. Kettig, Birmingham, Ala., and J. A. McCord, Atla Ga.

Q. 129. Is it not true that so long as a bank is solvent and open f business, under the regulations and provisions of the governmen authorities to which it is accountable, it has a right to rely upon fu deposited with it being drawn out only in the regular course business and through the usual and customary channels?

A. 129. So long as a bank is solvent and open for business, fu deposited with it are usually drawn out at such times and in s ways as its depositors may elect. Relative to its demand depo every bank is under obligations to pay the checks of its deposit when properly drawn and presented. It can not be properly said th the bank has "rights" under such conditions, rather it is under w defined obligations to its depositors.

Q. 130. Has not the experience of bankers developed a scale averages upon which bankers can rely as to the amounts to 400 provided to meet drafts upon their deposits and the me through which such drafts shall be paid, whether in c or in exchange, and is it not true that these averages are rel upon when the amount of reserves is fixed; also the amount of c usually necessary to be kept on hand to meet current requirement

A. 130. So far as we know, banks have not developed any sc of averages such as is described in this question. They necessar have to depend upon their experience and the character of their bu ness, but they can not with any safety, place absolute reliance on a preconceived idea as to what amounts will be withdrawn by th depositors, nor, in what way. The reserves of every bank are fix by the law under which the bank was created. The amount of c kept on hand varies from day to day without any fixed or defin rule covering amount.

Q. 131. Do you not know that in some of the smaller postoffices the country the postmaster occasionally declines to pay money orde in cash because his cash is too low and at times has even require holders of the money orders to wait a few days while the rese credit of the post-office could be built up to where New York chec could be given?

A. 131. We have no information.

Q. 132. Is it not true that banks could not exist and conduct profi able business if they could not rely upon these averages and, acti upon such reliance safely lend a large part of the money that th receive from their depositors on the assumption that no more than certain average fraction of it will be demanded on any o day?

A. 132. Whether a bank can continue to stay open and conduct business profitably depends on a great many elements, h as, for instance, the general ratio of deposits to capital stock; e kind and character of loans they make, the interest rate paid on posits; the amount of overhead expense carried, and many other ings too numerous to mention. If a bank is properly conducted, h due regard to all these elements, which vary almost from day to y, it probably could conduct a profitable business and safely lend large part of its deposits, but it would depend upon circumstances l almost entirely upon the manner in which its business was ndled.

Q. 133. Is it not a necessary result of placing all the banks in a te on the par list that practically all checks drawn on the banks such a State ultimately find their way into the Federal Reserve nk for collection so long as the Federal Reserve Bank agrees to ke such collection without expense?

A. 133. No.

Q. 134. Do you not know that this is the immediate result of acing all the banks in a given State on the par list by the Federal serve Bank having jurisdiction over that State, and does not this cess necessarily accumulate said checks in the hands of the Federal serve Bank?

A. 134. No.

Q. 135. When so accumulated, does not the presentation of the me and the exaction of payment thereof in currency upset the erage upon which the orderly conduct of the banking business sts?

A. 135. There is, and can be, no accumulation of checks in the Federal Reserve Bank of Atlanta. Such checks as come in are handled daily and the same are presented to the drawee banks daily, in regular course of business. There would be actly the same number of checks presented daily to any one par- ular bank, no matter what method of presentation was adopted. par clearance were made universal, and checks drawn upon non- mber as well as member banks came through the Federal Reserve nks, there would not be appreciably any more checks to be pre- ted daily to any one particular bank than would be the case if clearance were not adopted. There might be a tendency for the ecks to converge at the Federal Reserve Banks, but there would be more checks presented daily at any one particular drawee bank the daily transactions than before. Checks would be more mptly collected, if they did converge at the Federal Reserve nks, for each member receiving them on deposit would no longer e to route them in a circuitous manner in order to avoid ex- nge, but could send the checks direct to the Federal Reserve nk serving the district in which the drawee bank was located. e of the important results would be a tremendous lessening in the called "float" now being carried by the commercial banks in the untry and a lessening of the amount of fictitious and pyramided serves.

Q. 136. So far as the effect of the drawee bank is concerned, what is the difference between withholding checks from presentation over a period of time, when such checks are derived from a single source, or paying an accumulation of such checks by converging practically all sources from which they can come?

A. 136. The withholding of checks from presentation over an unreasonable period of time would constitute an accumula-
403 tion of such checks and would be an irregular method of handling checks. If checks converge at any particular place but are forwarded daily in regular course of business, there would be no accumulation, and the presentation of such checks as come in daily would be a regular method or way of handling such checks. In the case of the convergence of checks and presentation daily, the interest of the drawee bank cannot very well be prejudiced since the drawee bank must in any event meet all checks outstanding against it, irrespective of who may be the holder of or who may present such checks. Consequently, it is immaterial, so far as the drawee bank is concerned, whether the checks are presented for collection through one bank, or whether they are presented through several banks and individuals. Neither method would necessarily have any adverse effect on the drawee bank, because the obligation of every drawee bank is to pay its depositors' checks when properly presented, irrespective of the channels through which presentation is made. The only effect is to shorten the time which checks are outstanding. It does not result in the presentation of any greater amount on any day.

Q. 137. Is not such an accumulation, whether brought about in one or the other of the ways next above inquired about, equally effective in disturbing the orderly course of the payee bank's business if presented and payment in currency demanded?

A. 137. No. See answer to question No. 136, supra.

Q. 138. Generally speaking, would not the receipt of checks on the same payee bank from twenty banks in one day produce an accumulation of checks equal to the receipt of like checks by one bank in twenty days?

A. 138. No. If checks on the same payee bank are received from twenty banks in one day and are sent forward in regular
404 course of business the same day, that would be a regular and orderly method of collecting the checks. If one bank piled up checks which it received on the same payee bank for twenty days, that would amount to an accumulation of checks on that bank and would be an irregular method of collecting checks. The Federal Reserve Bank of Atlanta has never at any time accumulated checks in any such way nor does it propose to do so, but in every instance has forwarded, and proposes to forward, checks for collection in the regular course of daily business.

Q. 139. Is not the publication of a bank's name on the par list an invitation or advertisement for an accumulation of checks upon such bank, and, under the practice of the Federal Reserve Bank's par clearance system, does it not result in such accumulations?

A. 139. No. See answer to question No. 136, supra.

Q. 140. When the letter of December 23, 1919, was sent out stating that the time had come when the Federal Reserve Bank of Atlanta must "begin receiving on deposit, at par checks and drafts payable on presentation drawn on any bank in the United States, whether a member of the Federal Reserve System or not. This will include the checks and drafts drawn upon your bank, and the purpose of this letter is to ask that you join the vast army of par remitting banks by advising us it will be agreeable for us to include your name in the next issue of our par list, and that you will remit to us at par for items drawn upon you," was it contemplated and intended that the defendant bank would put the bank addressed on the par list whether such bank agreed to it or not? If not, how did
405 the defendant bank intend to get notice to its members and correspondents that it would handle and collect checks on such non-assenting banks?

A. 140. It was contemplated and intended that the name of the bank to which the letter was addressed would be placed on the par list and that checks drawn on that bank would be collected by presentation through agents, in case the drawee bank should not agree to remit through the mails at par.

Q. 141. Please examine your records and furnish statement of the number of aggregate amount of checks handled through your bank or any given non-member bank during the two months immediately preceeding the publication of said banks as being on the par list, and a like statement of the number and aggregate amount of such checks on the same basis, for the two months immediately following your publication of its name on the par list.

A. 141. Prior to the time a particular bank's name was placed upon the par list, no checks on that bank were handled by the Federal Reserve Bank of Atlanta, unless they were received from a United States Governmental Agency or as a purely collection item as distinguished from a cash item. For this reason, it is not possible to furnish the statements requested because the Federal Reserve Bank of Atlanta has no such data.

Q. 142. Please make up from your records like statements for each and all of the non-member banks that you have placed on your par list and tell the result in the aggregate.

A. 142. We make the same answer to this question as is made to question 141.

406 Q. 143. Do you know of any commercial reserve bank in the Sixth Federal Reserve District that ever advertised the names of the various banks on which it was prepared to collect checks at par?

A. 143. No.

Q. 144. Are not such publications confined to the towns or cities on which collections will be taken at par without naming the bank, checks upon which will be collected at par?

A. 144. As a rule commercial banks show in their par lists the name of towns, cities or states that they will collect at par. The par list of the Federal Reserve clearing system is prepared in sub-

stantially the same manner; where the entire state is collectible at par, the name of the state is shown; where the entire state is not collectible at par, but checks on the banks in a given town are collectible at par, the name of the town is shown; where checks on one or more banks are not collectible at par, the names of the particular banks in that town — are collectible at par are shown; where checks on all of the banks located in a given town are not collectible at par, neither the name of the town nor the names of the banks are shown. See Exhibit in answer to question 107.

Q. 145. Please state what you understand accumulation of checks to mean.

A. 145. The withholding of checks from presentation over a period of time. Among bankers, whether an accumulation of checks is considered justifiable or not depends upon whether the checks are held for a reasonable or unreasonable period of time. What is a reasonable period of time depends, among other things, upon
407 the number and amount of checks received during any one day. If the number and amount are large, daily collections should be made. If, however, only two or three checks are received on a particular day and the amount of such checks is relatively small (less than $100), it is generally the custom among commercial bankers to hold such checks over until the day following and forward them with any other checks which may come in during that day to the drawee bank for collection. So far as the par clearance plan of the Federal Reserve Bank of Atlanta is concerned, all checks, irrespective of their number and amount, are and will be forwarded for collection daily. There can be no possible accumulation of checks under the plan proposed.

Q. 146. Please state fully in what different ways they may be accumulated.

A. 146. The method outlined in our answer to question 145 is the only way.

Q. 147. What has always been the prevailing rules among banks as to the routing of checks for collection?

A. 147. There have been no prevailing rules among banks as to routing checks for collection. As a rule, each bank has adopted its own method of routing checks for collection. The essence of every method adopted usually is to have the checks collected with the least expense possible, irrespective of the delay involved. As we have heretofore pointed out in answer to another question, the expense of collecting checks under the Par Clearance System of the Federal Reserve Banks is absorbed by the Federal Reserve Banks.

408 Q. 148. What do you understand by the practice of indirect routing?

A. 148. Indirect routing takes place when a check is sent for collection through one or more banks instead of direct to the drawee bank or direct to a bank in the same town where the drawee bank is located. In our answer to question 34, supra, we have given an illustration of indirect routing which actually occurred.

Q. 149. Is such a practice in the interest of commerce in general?

A. 149. No.

Q. 150. Has it not always been the rule to route checks for collection by the most direct channels?

A. 150. No.

Q. 151. Is it not in the interest of commerce for checks to be collected in the quickest and most direct manner?

A. 151. Yes.

Q. 152. Is it not true that the longer it takes to collect a check the longer the amount represented by the check is carried in the float?

A. 152. Yes, if immediate credit is given at the initial bank of deposit.

Q. 153. If the Bartow Bank of Bartow, Georgia, one of said plaintiffs, is published as being on the par list of the Federal Reserve Bank of Atlanta, would not practically all out-of-town checks on that bank pass through the Federal Reserve bank or some one of its branches?

409 A. 153. The Bartow Bank of Bartow, Georgia, is one of the plaintiff banks in this case, but since suit was brought it has voluntarily become a member bank and is now remitting at par voluntarily. It does not necessarily follows that practically all out of town checks drawn on that bank will pass through the Federal Reserve Bank of Atlanta or its branches.

Q. 154. Assuming that there is a large interchange of business between two cities in the Sixth Federal Reserve District outside of Atlanta, in neither of which is located a branch of the Federal Reserve Bank of Atlanta, would it not take longer to handle checks between said points through the Federal Reserve Bank of Atlanta, or any of its branches, than it would to forward such checks direct to the payee bank for remittance?

A. 154. The Federal Reserve Act does not prohibit banks from collecting checks through other channels than the Federal Reserve Banks, nor from making exchange charges as between themselves. It does, however, prohibit banks from making exchange charges against the Federal Reserve Banks. In the illustration given, the banks in question, in order to avoid the payment of exchange, would not send checks to the drawee bank direct unless they had an arrangement with the drawee bank that it would not charge them any exchange, and if such drawee bank insisted upon making an exchange charge, the banks in said cities would send the checks drawn on the drawee bank to some other bank with which they had an arrangement to collect the checks on the drawee bank without payment of exchange; which bank, in turn, would have a similar arrangement with another bank, until finally it reached some bank
410 which had a par arrangement with the drawee bank or was willing to absorb the exchange charges. Therefore, in the majority of instances, it would not take longer to handle the checks between said points if they were handled through the Federal Reserve Bank of Atlanta. In all probability, they would be handled in a much shorter time.

Q. 155. Would not such a course necessarily involve transmission

from the collecting bank to the Federal Reserve Bank or its branch and re-transmission by the Federal Reserve Bank or its branch to the payee bank?

A. 155. We make the same answer to this question as is made to question 154.

Q. 156. Does not this course necessitate at least one record and handling of such checks that would be avoided by direct transmission from the collecting bank to the payee bank?

A. 156. Every time a collection item is handled by a bank, a record is made of the transaction and there are as many records of any particular collection item transaction as there are banks through which the item passes.

Q. 157. Is it not true that but for the fact that city banks clear for their country bank correspondents more of the country banks would be forced into the Federal Reserve System or forced to take advantage of its collection sytsem?

A. 157. There is no way whereby a state bank can be forced to become a member of the Federal Reserve System, and there is no way whereby a state bank can be forced to take advantage of
411 the collection system of the Federal Reserve System. Whether a state bank shall become a member of the Federal Reserve System and whether it will take advantage of the collection system of the Federal Reserve System, is purely optional with it. If city banks collect for their country correspondents at par, they do so purely because the country banks keep with them at all times compensating balances. The Federal Reserve Par Clearing System makes it possible for the city banks to enter into a more liberal arrangement with the country banks than was possible when the large number of banks that are now collectible at par were subject to the so-called "exchange charge." As a matter of fact a large proportion of checks deposited by member banks or non-member banks maintaining clearing accounts bear the indorsements of non-par remitting banks; that is, non-member non-par remitting banks are enabled to collect at par through city correspondents that are member banks all checks on par remitting banks and member banks appearing on our par list. From this it can be seen that the non-par remitting banks are able to collect at par checks drawn on member banks and non-member par remitting banks cannot collect at par checks drawn on the non-par remitting banks. In the last analysis, it is a case of 2,078 non-par remitting banks being able to collect at par through city correspondents, members of the Federal Reserve System, checks received on deposit that are drawn on 28,342 banks in the United States, without the said 2,078 non-par remitting banks extending the same facility to the 28,342 banks. These figures are as of August 15, 1921.

Q. 158. If this is not true, do you take issue with the statement to that effect contained in the letter from the governor of the
412 Federal Reserve Board attached as Exhibit A to the bill?

A. 158. We do not take issue with the statement contained in the letter from the Governor of the Federal Reserve Board, attached as Exhibit "A."

Q. 159. Is it not true that if a country bank has not a certain amount of capital prescribed in the act it cannot become a member of the Federal Reserve system, and that the only privilege such a bank can obtain from the system is the so-called collection privilege?

A. 159. It is true that if a state bank has not the amount of capital prescribed in the Federal Reserve Act, it cannot become a member of the Federal Reserve System, but it can become a clearing member, under the provisions of Section 13 of the Act, as amended.

Q. 160. Would not universal par clearance in the Sixth Federal Reserve District at once result in virtual monopoly of all commercial collection business through banking channels?

A. 160. It would not.

Q. 161. Has it not had that effect in other districts?

A. 161. We do not know what has been the effect in other districts.

Q. 162. Does not full and complete co-operation exist between the twelve Federal Reserve banks in the matter of collection?

A. 162. There is full and complete co-operation between the twelve Federal Reserve Banks through the medium of the
413 Gold Settlement Fund in the matter of collecting interdistrict items, i. e., items payable in a district other than that in which the receiving bank is located. As for the payment of items payable in the same district, all of the banks operate independently of each other.

Q. 163. Do not all of the twelve Federal Reserve Banks and branches follow the same general plan?

A. 163. We are not familiar, in detail, with just how the Federal Reserve Banks in the other districts proceed in the matter of collecting items.

Q. 164. What is this plan? State fully and in detail.

A. 164. We do not know what the plan is in the other districts. In the Sixth Federal Reserve District, checks received from member banks of that district, from other Federal Reserve Banks and from member banks located in other Federal Reserve Districts, drawn on banks located in the Sixth Federal Reserve District, are sent direct to the drawee banks for payment. Checks payable in other Federal Reserve Districts are sent to the respective Federal Reserve Bank or its branch. For the saving of transit time, member banks located in the Sixth Federal Reserve District may make arrangements for sending checks payable in other Federal Reserve Districts direct to the Federal Reserve Banks therein located.

Q. 165. If there are any differences in the plans for universal par clearance in any of the twelve Federal Reserve districts, please state what the differences are. Do you or not endorse on checks returned because the drawee bank refuses to remit at par "payment refused at full face value?" If so, why did you not state that the only deduction claimed was the lawful rate of exchange?

414 A. 165. As we have stated, we are not familiar in detail with the plans adopted in the other districts. We have stated the plan adopted in this district. We do not endorse on checks re-

turned because the drawee bank refuses to remit at par "payment refused at full face value."

Q. 166. Is it not true that the Federal Reserve banks of the twelve districts have inaugurated an interdistrict collection system?

A. 166. Yes.

Q. 167. Please attach as a part of this answer a copy of the last pamphlet printed in the Government Printing Office at Washington, entitled "Federal Reserve Interdistrict Collection System."

A. 167. In response, there is attached document asked for, marked Exhibit "B."

Q. 168. Does not this collection system embrace all Federal Reserve banks and all their branches?

A. 168. Yes.

Q. 169. Do not all these banks and their branches follow the same general plan in regard to such interdistrict system of collection?

A. 169. We do not know.

Q. 170. Why and how was this inter-district collection system established?

A. 170. The inter-district collection system was established by the Federal Reserve Banks pursuant to the Federal Reserve Act and the Regulations of the Federal Reserve Board.

415 Q. 171. Was it not the result of consultations and agreements?

A. 171. When the Federal Reserve Banks were first established there were numerous consultations between the Federal Reserve Board and the Governors of the Federal Reserve Banks in order to determine the safest basis on which this part of the Federal Reserve Act could be carried on. And, in order, so far as possible, to make the collection system, when established, conform to sound business and banking principles, various transit managers from sections of the country were called into consultation and their views considered at length prior to the inauguration of the inter-district clearance arrangements. It is believed that experience has demonstrated the wisdom of these conferences and the decisions finally arrived at.

Q. 172. Are not all the twelve Federal Reserve Banks and their branches parties to this system?

A. 172. It is contemplated that all of the twelve Federal Reserve Banks and their branches are parties to this system.

Q. 173. In establishing this inter-district system, did not all the Federal Reserve banks give their co-operation and support to the plan?

A. 173. Yes.

Q. 174. How could it have been otherwise established?

A. 174. We do not know.

Q. 175. What is the object of this inter-district system?

A. 175. To furnish a quick, efficient and inexpensive method of clearing checks throughout the United States with the least

416 possible friction and trouble, and thereby to put the commercial and banking interest of the country upon such a plane of efficiency as to enable them to meet the growing demands

of trade and commerce as contemplated by the clearing provisions of the Federal Reserve Act.

Q. 176. Was it not to take over the entire check-clearing business of the country as rapidly as possible?

A. 176. No.

Q. 177. Is not the effect of this system to accumulate and concentrate in the hands of the several Federal Reserve banks and their branches practically all checks that circulate outside the places where banks on which they are drawn are located, and under the inter-district system do not practically all such checks from all parts of the United States finally converge in the Federal Reserve bank or its branch handling such matters in the district where the drawee bank is located?

A. 177. No.

Q. 178. Does not this system in effect spread a net all over the United States into which is drawn practically every check on any par bank in the United States? If practically all checks are not so drawn into the system, about what proportion would be thus gathered in?

A. 178. No. There is no way that we can determine what proportion of checks would converge daily at the Federal Reserve Bank for collection.

Q. 179. Does not the publication of the name of any given bank on the par list anywhere in the United States, under the 417 operation of this system, at once cause practically all out-of-town checks on that bank to converge and concentrate in the Federal Reserve bank of the district in which the drawee bank is located?

A. 179. No. It might have a tendency to cause out-of-town checks to converge at the Federal Reserve Banks, but it is impossible to say whether it would or not, and also impossible to say to what extent.

Q. 180. Is it not practically impossible for any considerable proportion of out-of-town checks on a bank that has been put on the par list of the Federal Reserve bank for the district in which such bank is located to escape the net woven by the inter-district collection system of the Federal Reserve banks?

A. 180. We made the same answer to this question as that made to the previous question.

Q. 181. If the sole and only object of this inter-district collection system of the twelve Federal Reserve banks was to accumulate checks on various banks of the United States, what improvement on said system can you suggest?

A. 181. It was not the subject, sole or otherwise, of the inter-district collection system of the twelve Federal Reserve Banks to accumulate checks on the various banks of the United States.

Q. 182. Is not the accumulation of checks in quantities practically limited only by the relative aggregate of deposits of any bank inseparable from this system of inter-district collection?

A. 182. The inter-district collection system was not devised with any object of accumulating checks in quantities or otherwise. So

far as the Federal Reserve Bank of Atlanta is concerned,
418 checks are invariably and without exception dispatched for collection on the day they are received. No relation necessarily exists between the deposits of any bank at any time and the number of checks which may be outstanding drawn on that bank at that time. Other than as stated, we cannot answer the question.

Q. 183. Please refer to the public document issued from the Government Printing Office at Washington in 1920 under caption "Hearings before Committee on Rules, House of Representatives, 66th Congress, second session, on H. Res. 476." Kindly turn to page 45 of that public document on which Hon. Wm. P. G. Harding, Governor of the Federal Reserve Board, was recorded as having stated to the committee with reference to the methods of collection of checks on non-member and non-par banks by the Federal Reserve banks, as follows:

"Mr. Harding: Let me explain that this embodiment of the par list has been gradual. It started first in the New England district, where the Boston clearing-house for nearly 20 years has been able to collect at par, with the exception of perhaps a dozen banks in Vermont. I want to be perfectly fair and state that it is perfectly natural that the country banker should cling to his exchange, and it is not to be wondered at that they fight hard on the proposition. I have not a word of criticism to say about that, and want to be fair to them, and at the same time ask that they be fair to the Federal Board; I will be perfectly frank about it. In Vermont about 12 banks held out, and the Boston Federal Reserve Bank collected the checks on these banks by express companies, and one by one they came in and said they would remit and at par, and
then it was taken up in New York and the same proposition
419 was adopted there. There was a little friction, but it was gradually worked out.

"The idea was to explain the situation to the non-member banks and get as many of them to agree to the proposition that they would remit at par for checks drawn on themselves as possible, and we have reduced to a minimum those who still hold out. The Federal Reserve will appoint a collecting agency to make collection from those who are holding out, but in every case before that is done and a collecting agency appointed there has been correspondence and we have urged them to come in and remit at par, and the option has been given in every case that if the bank did not want to undertake the hardship of carrying cash on hand to meet these checks, to remit at par and they would not have to carry this cash on hand."

A. 183. We are advised by our Counsel that this needs no specific answer. We have, however, referred to the document and read the excerpt quoted.

Q. 184. Do you or do you not agree with the statement of Governor Harding above quoted that the only option put up to a country bank who refuses to remit at par is to voluntarily waive the right to make the charge for the service of such remittance or ex-

dertake the hardship of carrying cash on hand to meet checks drawn upon it?

A. 184. So far as the Federal Reserve Bank of Atlanta is concerned, we have never put up an option to such country banks. The restraining order went into effect before we attempted to collect any checks on such banks. Our proposed method of collecting such checks is outlined in our answer to question No. 6, supra. We might add, however, that we agree with the statement of Governor
420 Harding contained in question 183, but do not agree with the interpretation thereof as contained in question 184. If a country non-member bank which has been invited to remit at par prefers not to do so, and instead, prefers to adopt the plan of carrying cash on hand to meet all checks presented at its counter for payment it is evident that the bank, itself, does not regard it as a hardship. While, as stated in an answer to another question, the plan of presenting checks at the counters of drawee banks for payment in cash was one of those considered, as a means of carrying out the clearing facilities as contemplated by the Federal Reserve Act, no definite decision had been made when the restraining order was granted. The plan as finally adopted contemplates giving to the country banker the option of agreeing to remit through the mails in satisfactory exchange at par, or, on presentation across the counter remitting in cash or satisfactory exchange at par.

Q. 185. Is it not true that it is a hardship on a bank to have to carry at all times cash on hand with which to pay in currency all checks drawn upon it?

A. 185. If a bank should be required as a matter of law, to carry at all times cash on hand with which to pay in currency all checks drawn upon it, such a requirement would no doubt be a hardship on the bank; if, however, there is no such requirement, but the bank of its own volition elects to carry such cash on hand, it cannot then be said to be subject to any hardship. As a general rule no bank is ever called upon to carry at all times cash on hand with which to pay in currency all checks drawn upon it. Certainly no bank in the Sixth Federal Reserve District is or will be expected or required to carry at all times cash on hand with which to
421 pay in currency all checks drawn upon it. If any bank so elects to do so, that is entirely a matter for the individual bank to determine.

Q. 186. Is it not true that this hardship is thus imposed by the Federal Reserve Bank of Atlanta, or is intended to be imposed by it, on the non-par banks in the Sixth Federal Reserve District for the purpose of forcing such banks to agree to remit at par as the lesser of the two evils?

A. 186. No it is not. Under the par collection plan of the Federal Reserve Bank of Atlanta the amount of cash which the banks of the Sixth Federal Reserve District will have to carry will be no different in practice from the amount which said banks have always carried. The plan is not intended to work any hardship on the banks in the District and will not have that effect. The sole and only purpose of the Federal Reserve Bank of Atlanta in in-

augurating the par collection system is to render an efficient co
lection service to its member banks. The plan will in no wise mak
it necessary for the banks in the Sixth Federal Reserve District t
maintain in their vaults an excess amount of cash.

Q. 187. Is not the great expense of establishing collectio
agencies for this purpose incurred by the Federal Reserve Bank o
Atlanta, or intended to be incurred by it, if it is allowed to proceed
with the campaign now under injunction, for the ultimate pur
pose of compelling all plaintiff banks to agree to remit the proceed
of checks without any charge for the service rendered?

A. 187. No, it is not.

Q. 188. If this is not the purpose, please state fully what is th
object and purpose of establishing these collection agencies for th
purpose of presenting these checks against non-assenting
banks.

422 A. 188. Inasmuch as Federal Reserve Banks are not au
thorized to pay exchange charges for the collection of checks
in any case where a drawee bank refuses to remit direct at par, th
Federal Reserve Bank must avail itself of the only other metho
of effecting collection of a check drawn on such a bank, that is, th
employment of an agent or agency for the purpose of presenting
it over the counter. The general purpose of the Federal Reserv
Act and the specific provision — to the depositing and collection o
checks drawn on banks, demand that the Federal Reserve Banks
as clearing houses for their members, stand ready and willing t
collect checks on all banks within their districts. Inasmuch a
member banks are required to maintain all of their reserve wit
their respective Federal Reserve Banks and do not receive interes
thereon, the Federal Reserve Banks, in fairness to those member
banks and through them in fairness to the public at large, must b
prepared to collect all checks drawn on banks and not only a fractio
thereof. Otherwise, the member banks would be compelled t
maintain other bank accounts for the purpose of procuring facilitie
for collecting those checks which the Federal Reserve Banks did no
handle. In short, the purpose of the Federal Reserve Banks is t
procure the par payment of checks drawn upon banks payable in
money at 100 cents on the dollar.

Q. 189. If you say that your only purpose is to make collection
for the amount called for by the check, why are you not willing to
receive in payment of said check draft of the payee bank on its At
lanta correspondent, or upon its New York correspondent, for the
full amount of the check or checks presented?

423 A. 189. The Federal Reserve Bank will be willing to ac
cept in payment a draft on the drawee bank on its Atlanta
correspondent or a draft upon any other solvent Bank, which is col
lectible at par.

Q. 190. How frequently have you heard discussions and descrip
tion of the methods of other Federal Reserve banks in their dis
tricts designed to enforce par clearance?

A. 190. We cannot recall that we have heard any discussion and
description of the methods of other Federal Reserve Banks.

Q. 191. Please give the names, dates, and places where they occurred.

A. 191. We have answered this question in our answer to the previous question.

Q. 192. State what differences, if any, exist between the methods as described in such conference or conferences and those described in this bill and its amendments?

A. 192. Not having heard any discussion as stated in our answer to question 190, and not being familiar with the methods pursued by the other Federal Reserve Banks, we cannot state what the conditions are.

Q. 193. Is it not true that the officers of the Federal Reserve Bank of Atlanta and all the other Federal Reserve banks in the United States and the members of the Federal Reserve Board have entertained and expressed at the several conferences they have held together within the last eighteen months a feeling of disappointment that so few State banks had voluntarily joined the Federal Reserve System or availed themselves of its facilities for collection?

A. 193. No this is not true. Individual officers of the several Federal Reserve Banks, and perhaps individual members of the Federal Reserve Board may have, at times, individually expressed their opinions relative to these subjects, but, if so, we are not advised thereof. Insofar as the facilities for collection are concerned, at the present time, August 15, 1921, out of a total of 30,000 banks in the United States, 28,342 are on the par list and only 1,658 banks out of the total number are not on the par list. Since this suit was brought 24 banks, parties plaintiff to the suit, in the Fifth Federal Reserve District and 42 banks not parties plaintiff to the suit have voluntarily joined the system, and 37 banks have voluntarily agreed to remit at par. These banks are as follows:

Banks parties plaintiff to this suit that have voluntarily joined the Federal Reserve System:

Bank of Albertville, Albertville, Ala.
Bank of Commerce, Clayton, Ala.
Central Bank & Trust Co., Jasper, Ala.
Monroe County Bank, Monroeville, Ala.
Orrville Bank & Trust Co., Orrville, Ala.
Bank of Pittsview, Pittsview, Ala.
Roanoke Banking Co., Roanoke, Ala.
Citizens State Bank, Marianna, Fla.
Barnesville Bank, Barnesville, Ga.
Bartow Bank, Bartow, Ga.
Bank of Bowersville, Bowersville, Ga.
Bank of Bowman, Bowman, Ga.
Peoples Bank, Carrollton, Ga.
Bank of Cartersville, Cartersville, Ga.
Citizens Bank, Claxton, Ga.
Exchange Bank, Cordele, Ga.
Brand Banking Co., Lawrenceville, Ga.

Ogelthorpe County Bank, Lexington, Ga.
Bank of Monroe, Monroe, Ga.
Farmers Bank, Monroe, Ga.
Bank of Royston, Royston, Ga.
Bank of Soperton, Soperton, Ga.
Bank of Toccoa, Toccoa, Ga.
Bank of Zebulon, Zebulon, Ga.

Banks not parties plaintiff to this suit that have voluntari joined the Federal Reserve System:
Marion County Bank, Guin, Ala.
Farmers & Merchants Bank, Hartselle, Ala.
Bank & Trust Co., Talladega, Ala.
Central State Bank, Lakeland, Fla.
Citizens Bank, Lake Wales, Fla.
Bank of Ocoee, Ocoee, Fla.
Commercial Bank, Athens, Ga.
Citizens Bank & Trust Co., Bainbridge, Ga.
Bank of Boston, Boston, Ga.
Farmers Bank, Canon, Ga.
Farmers & Merchants Bank, Chipley, Ga.
Commerce Bank & Trust Co., Commerce, Ga.
Bank of Dawson, Dawson, Ga.
Bank of Donaldsonville, Donaldsonvile, Ga.
Douglassville Banking Co., Douglassville, Ga.
Southern Exchange Bank, Dublin, Ga.
Bank of Eastman, Eastman, Ga.
Greenville Banking Co., Greenville, Ga.
Peoples Bank, Greenville, Ga.
Farmers & Merchants Bank, Girard, Ga.
Farmers & Merchants Bank, Hartwell, Ga.
Citizens Bank & Trust Co., Jefferson, Ga.
La Grange Banking & Trust Co., La Grange, Ga.
426 Bank of Lavonna, Lavonna, Ga.
Bank of Henry County, McDonough, Ga.
Farmers & Merchants Bank, McDonough, Ga.
Morgan County Bank, Madison, Ga.
Bank of Candler County, Metter, Ga.
Bank of Millen, Millen, Ga.
Plains Bank, Plains, Ga.
Bank of Portal, Portal, Ga.
Walton County Bank, Social Circle, Ga.
Bank of Statesboro, Statesboro, Ga.
Central Bank, Swainsboro, Ga.
Bank of Wadley, Wadley, Ga.
North Georgia Bank & Trust Co., Winder, Ga.
Exchange Bank, Valdosta, Ga.
Algiers Trust & Savings, New Orleans, La.
Parish Bank & Trust Co., Opelousas, La.
Peoples Bank & Trust Co., Bell Buckle, Tenn.
Citizens Bank, Hohenwald, Tenn.
Wartrace Bank & Trust Co., Wartrace, Tenn.

Banks in this district that have voluntarily agreed to remit at
r since suit was filed.

Alabama Bank & Trust Co., Florence, Ala.
Farmers & Merchants Bank, Kinston, Ala.
Tenn. Valley Bank, Sheffield, Ala.
Chipley State Bank, Chipley, Ala.
Bank of Dade City, Dade City, Fla.
East Coast State Bank, Dayton Beach, Fla.
Polk County Trust Co., Lakeland, Fla.
Commercial Bank, Live Oak, Fla.
Citizens Bank, Tallahassee, Fla.
Bank of Ambrose, Ambrose, Ga.
Lakewood Bank, Atlanta, Ga.
Farmers & Merchants Bank, Berlin, Ga.
Columbus Loan & Banking Co., Columbus, Ga.
Peoples Bank, Cumming, Ga.
Elbert County Bank, Elberton, Ga.
Toombs County Bank, Lyons, Ga.
Bank of Montezuma, Montezuma, Ga.
Farmers Bank, Nicholls, Ga.
Citizens Bank, Rome, Ga.
Floyd County Bank, Rome, Ga.
Bank of Emanuel, Swainsboro, Ga.
Oglethorpe Savings & Trust Co., Thomasville, Ga.
Bank of Tifton, Tifton, Ga.
Farmers Bank, Union Point, Ga.
Bank of St. Bernard, Arabia, La.
Evangeline Bank & Trust Co., Chataignier, Ala.
Farmers & Merchants State Bk., Ocean Springs, Miss.
Bank of Charlotte, Charlotte, Tenn.
Bank of Eagleville, Eagleville, Tenn.
Houston County Bank & Trust Co., Erin, Tenn.
Farmers State Bank, Jasper, Tenn.
Farmers Bank, Lynchburg, Tenn.
Morristown Bank & Trust Co., Morristown, Tenn.
Citizens Bank & Trust Co., Murfreesboro, Tenn.
Union Bank, Pulaski, Tenn.
Hawkins County Bank, Rogersville, Tenn.
Russellville Bank & Trust Co., Russellville, Tenn.

During the last eighteen months not a single state member bank
the Sixth Federal Reserve District has withdrawn its membership
m the system. In the entire United States during the last eighteen
nths, Jan. 1, 1920 to June 30, 1921, state banks to the number of
5 have voluntarily joined the System and banks to the number of
28,342 are now (Aug. 15, 1921) collectible at par.

Q. 194. Is it not true that the disturbance and disruption of the orderly and customary course of business of a bank at results from presenting practically all checks drawn on it for yment in currency is more expensive and injurious to the business

of a State bank than would be the loss of its revenue from exch charges for remitting the proceeds of such checks?

A. 194. We are without information or experience and can answer this question for that reason.

Q. 195. As a practical banker of much experience, do you know that no bank can successfully conduct its business if it to keep on hand enough currency at all times to meet all che drawn against its deposits?

A. 195. One of the principal functions of a bank is to meet checks drawn against its deposits, when properly presented, and ev bank has at all times to provide itself with enough currency to prepared to meet checks properly drawn and presented. If a c arose where checks of a bank were not sent to other cities by drawer and all checks were presented locally at the counter for p ment, and paid in currency, the bank could still successfully erate. In ordinary practice every bank keeps on hand only enou currency to care for its anticipated or expected demands for payme in currency, but it must also be prepared at all times to meet unexpected demands, which it would probably ordinarily do by ing available resources which it had with other institutions, replenishing the same from other deposits received over the coun or from borrowing.

Q. 196. Is not the whole theory and practice of maintaining serves by banks based upon the knowledge, from experience, only a relatively small per cent of checks drawn against
429 posits have to be paid in currency?

A. 196. No. Our understanding of the theory of reser is that every bank of deposit should have available for the use of depositors funds sufficient to meet current withdrawals by its positors. These funds, however, need not necessarily be curren and in fact, the law of no state requires all of the reserves to be c ried in the vault of the bank in currency. The larger percent must be deposited with their reserve agents; if the bank is a mem of the Federal Reserve System the entire amount of the required serve, with few exceptions, must be carried in the form of a rese deposit with the Federal Reserve Bank. This would indicate t the present theory and practice of maintaining reserves by ban is not based upon the theory that the payment of withdrawals always be required to be paid in currency. Till money, whether not required by law, must always be available to meet currency wit drawals in currency, and such banks must therefore necessarily c sufficient currency to meet all withdrawals that may be expected be made over the counter. If a bank for one reason or another ele not to pay in exchange those checks which the holder gives it t option to pay in exchange, it must as a matter of protection to its and its depositors carry sufficient cash to meet these withdrawals.

Q. 197. If a bank is compelled to keep on hand at all times suf cient currency to meet all demands evidenced by checks against its depositors at all times outstanding, is not its resources availab for loans practically limited to its capital and surplus?

A. 197. No. It would not anticipate that checks evidencing the aggregate deposits would be outstanding at any one time.

Q. 198. If not to this extent, then are not its funds subject to loan very largely reduced below what they would be if it could pay its checks in exchange or through ordinary banking channels?

A. 198. No, the amount of resources of a particular bank available for loans would be the same whether it paid its checks in currency or in exchange. In either event the funds used, whether in the form of cash or bank deposits, would not be available for loans.

Q. 199. In ordinary commercial banks is not the principal source of revenue interest on the loans they make?

A. 199. Yes.

Q. 200. When was the plan to enforce par clearance in the Sixth Federal Reserve District finally determined upon?

A. 200. In the fall of 1919. It has, however, never been fully put into effect on account of the restraining order in these proceedings.

Q. 201. Who instructed its inauguration?

A. 201. The directors instructed its inauguration. (See copy of resolution attached in Exhibit "BB.")

Q. 202. Were such instructions verbal or written?

A. 202. Verbally.

Q. 203. If written, attach copy thereof to your answer to this question.

A. 203. We have answered that they were verbal.

Q. 204. If verbal, to whom were they given and by whom?

A. 204. They were given by the Board of Directors to the officers.

Q. 205. Was any memorandum of such instructions made?

A. 205. No, other than as part of minutes.

Q. 206. If so, attach copy thereof to this answer.

A. 206. We have answered that there was no memorandum of instructions, other than as part of minutes.

Q. 207. If not in writing, give exact wording of these instructions, including the methods to be adopted for the enforcement of par clearance.

A. 207. We cannot recall the exact wording of the instructions, but in substance, they were to make arrangements as rapidly as possible for the collection at par of all checks drawn on banks of the Sixth Federal Reserve District, in accordance with the provisions of the Federal Reserve Act and the Regulations of the Federal Reserve Board.

Q. 208. What information, if any, as to methods employed in other districts accompanied these instructions, or was this information received afterwards?

A. 208. No such information accompanied the instructions and none was received afterwards.

Q. 209. Attach copies of all such information if in writing.

A. 209. We have answered that there was no such information.

Q. 210. If the Federal Reserve Bank of Atlanta succeed
in putting into effect par clearance throughout the Sixth Fe
eral Reserve District, will it not result in the non-member banks
the Federal Reserve System performing services for the Reser
Bank of Atlanta free of the charge which they are accustomed
make against their own correspondents?

A. 210. No. The service in question, if it can be called a servic
would not be performed by the Federal Reserve Bank of Atlant
but would be performed for the drawee bank's own customers, i. e
the drawers of checks. Under Section 13 of the Federal Reserve Ac
no Federal Reserve Bank is permitted to pay any so-called "exchan
charges" and, in remitting to the Federal Reserve Bank of Atlan
the non-member banks, if they voluntarily remit at par, would rem
without deducting these so-called charges; furthermore, the Fede
Reserve Bank of Atlanta, in its par clearance program, has advis
the non-member state banks that it would absorb the postage an
other incidental expense of remitting for the checks at par and
they desired to remit in currency, would absorb the shipping charge
The cost of the so-called "service," therefore, would be insignifican
and consist of expenses which properly belong to the general ove
head expenses of the bank.

Q. 211. Can any independent bank seeking business with cor
spondents pay the customary exchange charges and compete for co
lection business with the Federal Reserve Bank which does not ma
any such charge for the collection of checks?

A. 211. Yes. We are advised that at the present time, the Whi
ney Central National Bank of New Orleans is competing wi
433 the Federal Reserve Bank in this respect, and we presu
successfully; otherwise they would not do so.

Q. 212. Will not the enforcement of par clearance in the Sixt
Federal Reserve District give the Federal Reserve Bank of Atlan
and its branches practically a complete monopoly of the business
collecting checks in that district?

A. 212. We have answered this question in our answer to questi
211.

Q. 213. Does not this monopoly deprive the commercial banks
the district of the revenues previously received from exchan
charges?

A. 213. There would be no monopoly. Furthermore, the com
mercial banks may collect checks between themselves without sub
ing them through the Federal Reserve Bank, and under such circu
stances there is nothing to prevent the remitting bank making an e
change charge.

Q. 214. Who first advised presenting checks on banks en mas
and demanding cash for the same and refusing to accept exchan
or any other medium of payment?

A. 214. No such advise has ever been given at any time.

Q. 215. In what district was it first used?

A. 215. We do not know of any district where any such practi
was used or advice given.

Q. 216. Was not Ramsey, of the Omaha bank, first selected to try out this scheme?

434 A. 216. We do not know anything about Mr. Ramsey's activities or any scheme of the kind described.

Q. 217. If not, who was the first agent employed for this purpose?

A. 217. We know of no agent ever employed for this purpose.

Q. 218. Were not all of the banks in the system elated at the success of the scheme when thus tried?

A. 218. We have answered that no such scheme was ever tried or advised.

Q. 219. Did not the Federal Reserve Bank of Atlanta, along with all the other Federal Reserve Banks, give their orders to inaugurate and enforce par collection on the non-member banks upon directions from the Federal Reserve Board at Washington?

A. 219. No.

Q. 220. Were not the methods to be employed specified in these orders?

A. 220. There were no such orders.

Q. 221. What concern is it of bank whether payment for goods is due at the location of buyer or seller?

A. 221. It is of no concern to a bank. The only concern the bank has in such a transaction is to pay in full the check of its depositor when properly presented.

Q. 222. Whose duty is it to present a check for payment, the drawer or the holder?

A. 222. It is nobody's duty. It is the privilege of the 435 drawer to present the check, if he draws it to his own order, and likewise the holder of a check has the same privilege.

Q. 223. Is the drawer under any obligation to relieve the holder of that duty? If so, what and why?

A. 223. The drawer is of course under no obligation to present the check for the holder. The drawer is, however, under obligation to see to it that the bank on presentation pays the check in full. Presumably the check is given in payment of a debt due to the holder by the drawer, and if the check is not paid in full the drawer has not fulfilled his obligation to the holder. Consequently, as the bank is the means of enabling the drawer to pay his debt, the bank owes the drawer the obligation to pay to the holder of the check the full amount thereof. If the bank deducts an exchange charge, it has not fully performed its obligation to the drawer.

Q. 224. Is not any process which lightens the task and duty of presenting a service to the holder?

A. 224. No. The bank is under no obligation to the holder to render to the holder, as such, any service whatever. The bank is under obligation to the drawer to pay the check to the holder when properly presented. The holder of a check has the right to present the check for payment, but any so-called "service" which the bank may perform in paying the check is a service to the drawer and not the holder, if it can be called a service to anyone. In drawing a check, the drawer directs the drawee bank to pay a fixed amount to

a certain person. So far as the bank is concerned it is immater
who that person is. The bank's only obligation is to comp
436 with the direction of the drawer as specified on the face o
the check. The holder must look to the drawer and th
drawer alone.

Q. 225. What difference or distinction is made by Atlanta clea
ing-house banks in the terms on which they receive par checks an
checks which cannot be cleared at par?

A. 225. The Atlanta Clearing House Association has seven
schedules by which banks members of the Association are governe
in the terms on which they receive checks on deposit.

Schedule No. 1 applies to the accounts of individuals, firms an
corporations, and prescribes the collection charge (so-called exchang
that shall apply on checks received on deposit, with the provisio
that checks on the following cities (which are all Federal Reserv
Bank or branch cities, with the exception of Hartford, Conn., an
Washington, D. C.) may be handled at par:

Atlanta, Ga., Baltimore, Md., Boston, Mass., Chicago, Il
Cincinnati, O., Cleveland, O., Dallas, Tex., Hartford, Conn., Kansa
City, Mo., Louisville, Ky., New Orleans La., New York, N. Y.
Philadelphia, Pa., Pittsburgh, Pa., Bristol, Va., St. Louis, Mo., Was
ington, D. C.

The schedule also provides that checks stamped or printed on fac
"payable at any bank in a par city or payable at New York Cit
through the Northern New Jersey Clearing House" may be handle
at par.

Schedule No. 2-A applies to bank deposit accounts and provide
that all counter checks drawn on any point within the United State
may be credited at par, provided the depositing bank carries collected
and compensating balances, and agrees to remit to the Atlanta
437 Clearing House Association at par for checks sent them. Such
banks must further agree that, should the balance carried not
be compensating, as shown by analysis of account, the loss will b
charged to them. Checks bearing two or more bank indorsements
may be credited at, but not less than 1/8 of 1 per cent, except thos
on the following cities and states, which may be credited at par

Atlanta, Ga., Birmingham, Ala., Chattanooga, Tenn., Dallas, Tex.
Macon, Ga., Minneapolis, Minn., Nashville, Tenn., New Orleans, La.
San Francisco, Cal., Savannah, Ga., Washington, D. C., Connecticut
Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachu
setts, Missouri, New Hampshire, New Jersey, New York, Ohio
Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

Of the eleven cities named, seven are either Federal Reserve Bank
or branch cities.

This schedule further provides that interest at the rate of 3 per
cent per annum may be paid on full collected daily balances when
they average $3,000.00 and above.

Schedule No. 2-B also applies to bank deposit accounts and pro
vides, that, so far as items received from banks, bankers and trust
companies who carry collected and compensating balances, checks
on any National Bank within the United States may be credited at

par, and checks on state banking institutions included in the Federal Reserve Bank par list may be credited at par, and all checks on the following cities and states may be credited at par:

Atlanta, Ga., Birmingham, Ala., Chattanooga, Tenn., Dallas, Tex., Macon, Ga., Minneapolis, Minn., Nashville, Tenn., New
488 Orleans, La., San Francisco, Cal., Savannah, Ga., Washington, D. C., Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

Of the seven cities named, seven are either Federal Reserve Bank or branch cities.

This schedule also provides that interest at the rate of 3% per annum may be paid on full collected daily balances when they average $3,000.00 and above.

Schedule No. 3 applies to banks located outside of the Sixth Federal Reserve District and provides that checks drawn on any bank located within the Sixth Federal Reserve District may be credited at par, provided a compensating balance is maintained. The amount of such balance shall be optional with the receiving bank except that in no case shall the average daily collected balance kept be less than 35% of the total previous month's sendings on points other than Atlanta.

This schedule also provides that interest at the rate of 3% per annum may be paid on average daily collected balances in excess of the required amount, and further provides that if the percentage balance agreed upon is not maintained, interest will be charged at a rate of not less than 6% per annum on the deficiency.

Q. 226. How long have you been clearing national bank checks at so-called par?

A. 226. Since the 15th day of July, 1916.

Q. 227. Has not this condition in the Atlanta clearing-house prevailed all during that time?

A. 227. We do not understand this question but if it relates to question 225, we do not know.

489 Q. 228. Do you know of any clearing-house rules in the United States which provide accepting all out-of-town checks at actual par for immediate credit? If so, name them.

A. 228. Yes. Birmingham.

Q. 229. Do not depositors have to pay interest on float in order to get immediate availability and credit?

A. 229. Some banks require depositors to pay interest in order to get immediate availability and credit on checks which are in transit for collection, and some banks do not. There is no hard and fast rule about it.

Q. 230. What practical or real difference is there between interest and service charges on uncollected items and straightened out exchange?

A. 230. There is this difference. For example: Under the rules of the Nashville Clearing House Association, clearing house banks would charge to depositors only an interest charge covering outstand-

ing transit time on checks collectible at par, and an interest charge, plus an exchange charge, on checks not collectible at par. In other words the interest charge is a charge made by a bank against its depositor for advancing to it the full amount of the check prior to its collection in money and it is based entirely upon the time involved in collecting this money. In other words it is an interest or a discount charge no different in substance from an interest on a loan or advance made for the length of time which it takes to collect the check. The exchange charge, on the other hand, is a charge made by a drawee bank against the holder of a check for paying that check not in money but in a draft on some other bank. While in the old days, when transportation was difficult and expensive
440 and when transfers of credit were made usually by shipping currency, there may have been some justification for a drawee bank to charge the holder of a check for paying that check in exchange rather than in cash over the counter, at the present time, when owing to the facilities of the Federal Reserve System, transfers of currency from one section of the country to another have been reduced to a minimum and transfers of credit are in reality nothing but transfers of book credits, there is no longer the same reason or justification for the exaction of the exchange charge that there used to be, and this is particularly true so far as the Federal Reserve Banks are concerned because of the fact that the Federal Reserve Banks in sending checks to a drawee bank for payment are ready to accept payment either in currency or in exchange. In the event that the drawee bank elects to ship currency, the Federal Reserve Banks pay the entire expense of that shipment. In the event the drawee bank elects to pay in exchange the Federal Reserve Bank even pays the cost of postage of transmitting the bank draft.

Q. 231. Is not the practical effect of real par clearance to make a check payable at any bank rather than alone at the bank on which drawn?

A. 231. No. The practical effect is to make it worth 100 cents on the dollar anywhere in the United States.

Q. 232. Is it not true that a large proportion of the business of the country involving the transfer of money and credits is handled through the medium of checks rather than of actual money?

A. 232. Yes.

441 Q. 233. Is it not further true that almost all the business handled between different banking points is transacted by check, especially business handled by individuals, firms, and corporations not in the banking business?

A. 233. Almost all of the business handled between different banking points is transacted by checks or drafts.

Q. 234. Is it not now and has it not for a great many years been the general custom for banks to settle checks drawn on them, and sent for collection from distant points, by drawing their own checks on their balances with duly approved Reserve agents in recognized financial or clearing centers?

A. 234. There is a custom to that effect. Occasionally, and as there may be necessity therefor, currency is shipped.

Q. 235. With such general and practically universal custom established, what effect would it have on a bank's business for one institution to accumulate in its own hands all, or practically all, of the out-of-town checks drawn on a bank and present them over the counter of the drawee bank, from day to day, with the demand for payment in cash?

A. 235. Manifestly the effect would depend entirely upon circumstances. The Federal Reserve Bank of Atlanta has never at any time intended to accumulate checks and will not in the future accumulate checks sent to it for collection. All checks will be transmitted daily for collection, in the ordinary course of business.

442 Q. 236. Would not such collection of checks and presentation in a body tend to break down the bank's business as now conducted?

A. 236. This is again a matter of circumstances. We have already answered that the Federal Reserve Bank of Atlanta at no time intended or intends in the future to accumulate checks and present them en masse for collection. The Federal Reserve Bank of Atlanta has never even considered such a plan, and does not now consider any such plan and will not in the future.

Q. 237. Was it the intention of the defendant bank to have checks drawn on non-assenting non-member banks, and deposited with defendant for collection, presented at the counters of such non-assenting banks and payment demanded in cash? Was it the intention to have agents presenting such checks refuse to accept exchange at par that would have been acceptable if sent in remittance under a par agreement?

A. 237. No. We have heretofore answered the first part of question No. 237 in our answer to question No. 6, and refer thereto and adopt the same answer to this question. As to the second part of question No. 237, we refer to our answer to questions Nos. 6 and 25.

Q. 238. Who are the chief beneficiaries of the "par clearance" plan as practiced by the Federal Reserve Banks? Upon what class chiefly does the corresponding burden fall?

A. 238. The general public of the United States will be the chief beneficiaries of the par clearance plan, including the commercial and banking interest of the country. The burden—if you mean by that, the expense, will fall upon the Federal Reserve

443 Banks, as they absorb these expenses. There will be no burden upon any other class or classes.

Q. 239. Considering the general custom of paying out-of-town checks through exchange drawn on correspondent banks in other cities, would not the practice of the Federal Reserve Bank advertising a non-assenting non-member bank on its par list, and presenting the checks so collected for payment in cash over the counter, require such bank to keep on hand adequate reserves both in its vaults and with its correspondent banks? Would not such a course require building up its total reserves beyond the amount necessary for conducting the business of the bank as had been customary in the past when checks came through the mail for remittance in exchange on duly approved reserve agents?

A. 239. As stated in our answer to question No. 196, the reserve which a bank is required to maintain are prescribed by law. No greater amount would be required if checks were presented over the counter for payment in cash. As to the second part of question No. 239, the total reserves are prescribed by law and would remain the same irrespective of whether checks on the bank were paid in cash or in exchange on correspondents.

Q. 240. Would not the necessity for building up its reserves in excess of the legal requirements diminish the lending power of such banks to the extent of such excess Reserve requirements and cause a loss of profit on such diminishing lending power?

A. 240. No. See our answer to question 198, supra.

Q. 241. If a non-member bank declines to remit at par for its checks to the Federal Reserve Bank of Atlanta, tell the Court
444 what method could be adopted to secure collection of such checks that would not involve breaking down the business of the bank as it has been conducted?

A 241. We have heretofore answered this question in our answer to question 6. We refer thereto and adopt that answer as our answer to this question.

Q. 242. State whether or not the method outlined in answer to the question immediately preceding would not involve an expense for the collection that must necessarily become a charge made against the Federal Reserve Bank?

A. 242. No. Any expenses which might be incurred by the Federal Reserve Bank under the plan outlined in our answer to question 6, supra, would not constitute an exchange charge against the Federal Reserve Bank. See our answer to question 122, supra.

Q. 243. The member banks of the Federal Reserve system are required by law to remit at par to the Federal Reserve Bank for all checks drawn on them and collected through said Federal Reserve Bank, are they not?

A. 243. Yes.

Q. 244. When this law became effective was it accepted without protest by all the member banks of the Federal Reserve Bank of Atlanta?

A. 244. We do not know, either of our own knowledge or upon information and belief.

Q. 245. If any of the member banks protested either as to having to remit at par, or as to having to remit in exchange on
445 Atlanta or some other specified point, please give the names of all of such banks and attach the original letters, or true copies thereof from such banks on the subject with carbons or copies of all letters sent from the Federal Reserve Bank or its branches to such protesting bank.

A. 245. We have looked through our correspondence file and do not find any such letters or copies.

Q. 246. Did not some of the member banks of the Atlanta Federal Reserve Bank protest against having to remit in exchange on Atlanta, or on banks located in the home cities of branches of the Federal Reserve Bank of Atlanta?

A. 246. We do not know, either of our own knowledge or upon information and belief.

Q. 247. Produce the correspondence or true copies thereof with such banks and the Federal Reserve Bank of Atlanta and its branches on this subject.

A. 247. We cannot find any such correspondence or copies.

Q. 248. Has the Federal Reserve Board ever issued any regulations on reasonable charges for collection or payment of checks and drafts, and remission therefor by exchange or otherwise, to be made by member or non-member banks? If so, attach a copy of such regulations.

A. 248. No.

Q. 249. Has the Federal Reserve Board or the Federal Reserve Banks or any of them ever made any regulations as to the
446 amount of exchange that could be charged by member banks to the public at large for collecting and remitting checks on distant points? If so, attach copies of such regulations.

A. 249. No. Neither the board nor the banks have made any such regulations.

Q. 250. Do not the clearing-house banks of Atlanta, and a large number of other clearing-house cities of the Atlanta Federal Reserve District, charge depositors exchange for collecting checks on distant points?

A. 250. No, not strictly speaking. Clearing House banks in Atlanta and some other Clearing House cities in the Atlanta Federal Reserve District make what are really collection rather than exchange charges against the deposit of checks drawn on distant points; the purpose of such charges being to reimburse the Clearing House bank (*a*) for the interest on the fund represented by the checks between the date of deposit and credit, and the time of actual collection and (*b*) the amount of exchange that will be charged by the drawee bank for remitting its depositor's check. This charge is calculated from time to time on the basis of the average exchange charges then being made by the remitting banks, which was in January, 1921, for instance, $1.16 per thousand, in February, 1921, $1.22 per thousand and in March, 1921, $1.22½. The charge referred to in paragraphs 12 and 40 of the plaintiff's bill, stated to be $1.11 per thousand, is undoubtedly the charge based upon the average exchange charged by the remitting or drawee bank. The restraining order in this case and other litigation pending has militated against the establishment of a complete national par list, and some clearing houses, the
447 members of which would be entirely satisfied with making a charge only for the interest earning value of the funds credited now regard the work incident to making a distinction between non-par and par points as onerous, and therefore make a flat charge regardless of the fact that some points are collectible at par through the Federal Reserve System. Banks in other clearing houses not regarding the division of checks as to par and non-par points as burdensome, impose a collection charge on checks collectible at par at such rate as will reimburse them for interest on the amount between the date of deposit and credit, and that of actual

collection; while on checks drawn on non-par banks they make a charge which will reimburse them both for the interest on the fund while in process of collection and the exchange charge made by the drawee bank.

Q. 251. Do such clearing-house banks make any distinction in charge for exchange for the collection of checks drawn on banks on the par list and those not on the par list?

A. 251. As stated in answer to the preceding question, some clearing house banks do make a distinction and others do not, for the reason as set forth.

Q. 252. Is not the overhead expense of conducting a banking business in small communities, where the volume of business is small, naturally greater than the overhead expenses of banks in large communities where the volume of busines is greater?

A. 252. Not necessarily. Whether or not the overhead expenses of conducting a banking business in a small community where the volume of business is small, is greater than the overhead
448 expenses of banks in large communities where the volume of business is greater, would depend upon the capabilities of the management and the character of the business.

Q. 253. Is it not true that the expense of remitting for checks and keeping balances upon which to draw for same is naturally much greater for banks in some localities than for others? What is the average cost per $1,000 to the average bank in remitting at par? What are the elements of such cost?

A. 253. Here again it is impossible to say definitely, for the matter depends on so many uncertain elements. This, however, we know for certain: Where a bank remits at par to the Federal Reserve Bank of Atlanta, there is no expense for creating balances against which checks in payment may be drawn. The drawee bank can send checks received by it over its counter to its correspondent for deposit and credit, and draw checks upon such balances in payment of items sent to it for collection. If the volume of cash received by it on deposit is such that it becomes necessary to send such cash to its correspondent so as to create balances, the drawee bank may forward such currency to the Federal Reserve Bank of Atlanta at the expense of the Federal Reserve Bank of Atlanta in payment of items sent to it for remittance. There is no expense, regardless of the location of the bank, and consequently no element of cost.

Q. 254. Assuming that banks are entitled to reasonable compensation for services rendered would not banks in some locations be justified in charging a greater exchange rate than banks in other locations?

449 A. 254. We cannot assume that a bank is entitled to compensation for services rendered in the payment of its own customer's checks, as it is the obligation of every bank to pay in full checks drawn by its depositors when properly presented.

Q. 255. If a reasonable revenue from exchange charges, in addition to the revenue derived from interest and discounts at legal rates, is necessary to pay running expenses and provide a reasonable rate

of earning on capital stock of banks, what justification is there for the Federal Reserve Bank, or any other agency, to force such bank to relinquish such exchange charges?

A. 255. It would not appear that revenue from exchange charges for remission of checks is necessary to pay running expenses and provide a reasonable rate of earning on capital stock of banks. All National Banks, including a large number with a capital and surplus as small as that of some of the petitioning banks, in accordance with the law, have been remitting at par over a period of years, and their reports of condition, as compiled by the Comptroller of the Currency, indicate that they have been able to pay running expenses, dividends and add substantially to their surplus during this period. Nor has it come to our knowledge that any single state bank which has voluntarily agreed to remit at par has not been able to pay running expenses and show a reasonable rate of earnings on capital stock, and there are now, August 15, 1921, 18,551 State Banks, items on which are collectible at par. In attempting to institute a universal par clearance of checks throughout the Sixth Federal Reserve District, the Federal Reserve Bank of Atlanta has been actuated by no other motive than to carry out the provisions of the Federal
250 Reserve Act, as amended by the Congress of the United States.

Q. 256. In your answer to this bill designated 7-B, on page 15 of the printed copy, you state that it is not true that you have ever "in general, or as a matter of custom, sent out for collection checks on non-member banks authorizing collection charges to be deducted therefrom. Defendants, therefore, deny the allegation contained in paragraph 7 of said amendment as charged. They admit that the Jacksonville branch did, at or about the times mentioned," etc. * * * "Defendants say, however, that the said defendant bank accepted remittance of such items in the isolated cases enumerated in said sub-sections of said paragraph for the sole and only reason," etc. * * * Is it not true that the defendant bank and its branches accepted remittances in quite a large number of other cases than those enumerated in said amendment where exchange had been deducted?

A. 256. The defendant Reserve Bank did, in the isolated cases referred to in sub-sections A, B, C, D, E, F, and G, of paragraph 7 of the amendment to the Bill of Complaint, receive remittances less certain deductions for remittance charges. And at, or about the same time, did accept some other remittances from which were deducted certain remittance charges, but the sole and only reason why it did accept such remittances was that it had taken the items in question for collection, believing in good faith that the same could be collected at par. On learning that such checks could not be collected at par, they were handled in this way because of our desire to accord due respect to the Court's restraining order, which prevented any further effort to collect them at par. There was
251 no purpose or intent generally to handle checks in this manner.

Q. 257. Attach a list of all banks from which you have accepted remittances less exchange during the past two years, together with the amounts remitted and the exchange deducted.

A. 257. In response there is attached document called for, marked Exhibit "C."

Q. 258. The letter of Gov. Wellborn, dated December 23, 1919, attached — the original bill as Exhibit B, states that at that time there were 25,151 banks in the United States shown in your par list. Paragraph 17-A of your answer states that at the time the original bill was filed 26,315 banks in the United States were remitting at par for checks through the mails, and the same paragraph states that on January 1, 1921, out of approximately 30,523 banks in the United States all but 1,755 of said banks were remitting to the Federal Reserve bank at par. Is it not true that all checks passing through any Federal Reserve Bank go for collection to the Federal Reserve Bank of the district in which the drawee bank is located?

A. 258. The number of par remitting banks shown in Governor Wellborn's letter of December 23rd, 1919, attached to the original Bill as Exhibit "B" is correct, and the number of par remitting banks given in paragraph 17-A of defendant's answer at the time the original Bill was filed is correct; also the number of par remitting banks on January 1, 1921, referred to in the same paragraph, is correct. Each Federal Reserve Bank handles checks drawn on banks located within its district, whether such checks are received
432 from some other Federal Reserve District for credit of a Federal Reserve Bank, or from member banks located in its own district.

Q. 259. Does not each Federal Reserve Bank collect checks on the member banks, or par-remitting banks, of any other district? Is it not true that the universal method of handling checks through the Federal Reserve's par clearance system is for the Federal Reserve Bank of any given district to send for collection to the Federal Reserve Bank of the district in which the drawee bank is located all checks payable by such drawee bank and deposited for collection?

A. 259. We answer "Yes" to the first part of this question. It is not true that the universal method of handling checks through the Federal Reserve par clearance system is for the Federal Reserve Bank of any given district to send for collection to the Federal Reserve Bank of the district in which the drawee bank is located all checks payable by such drawee bank and deposited for collection. Checks coming into the hands of a member or a clearing member bank in one district, which are payable in another district, may be sent either to the Federal Reserve Bank of the district in which the member or clearing member bank is located, which will forward it for collection and remission of the proceeds to the Federal Reserve Bank of the district wherein the drawee bank is located, or, the member or clearing member bank may send the items payable in another Federal Reserve District direct to the Federal Reserve Bank of the district where the drawee bank is located, for collection and credit of its own Federal Reserve Bank. In some cases, checks drawn on points

shown on the Federal Reserve par list do not go to the Federal
Reserve Bank of the district at all; a number of institutions
in a densely populated section often arrange a clearance
ong themselves and receive either debit or credit, as the case may
at the Federal Reserve Bank of their district, as a result of the
lement.

. 260. Is it not true that the 25,151 banks referred to in Gov.
llborn's letter of December 23rd, or the 30,523 banks less 1,755
-assenting banks referred to in your answer as of January 1,
1, would send all checks, or approximately all checks, received
them on any of the banks that are parties to this case direct to
Federal Reserve Bank of Atlanta or one of its branches if the
es of plaintiff banks appeared on your current par lists?

. 260. No, it is not true that all of the 25,000 odd banks re-
d to in Governor Wellborn's letter dated December 23rd, 1919,
he 30,000 odd banks less the 1,755, referred to in our answer
f January 1st, would send all checks or approximately all checks
ved on deposit by them on non-member banks that are parties
is case direct to the Federal Reserve Bank of Atlanta, or to its
ches. A large number of the banks referred to would still
tain their acounts with city correspondents and send checks
ese correspondents for credit, and the latter, by reason of their
bership in the Federal Reserve System or arrangements made
some member, would themselves collect the checks in qustion.

261. Under the par-clearance system of the Federal Reserve
s would not all, or practically all, of the checks drawn on
plaintiff banks or the banks in the system in the Sixth Fed-
eral Reserve District and deposited with the banks in the
clearing system converge in and be handled through the
al Reserve Bank of Atlanta or its branches?

261. Not necessarily so. Many of such checks would be de-
d with banks which maintain their own collection facilities
would not go through the Federal Reserve Bank of Atlanta.

262. Would not such checks automatically pass through the
al Reserve Bank of Atlanta or its branches? Does this not
sarily mean the accumulation in the Federal Reserve Bank of
ta or its branches of all, or practically all, checks payable to
-town payees drawn on any bank in the Sixth Federal Re-
District carried on the par list of the Federal Reserve system?

262. We adopt our answer to question 261 as our answer to
uestion. Whatever checks converged at the Federal Reserve
of Atlanta, or one of its branches, could in no sense be said
an accumulation, as such checks would, upon date of receipt,
warded by the Federal Reserve Bank of Atlanta, or its branch,
drawee bank for payment.

263. Are you familiar with the efforts of the Jacksonville
of the Atlanta Federal Reserve Bank to collect checks on
ember banks of Florida through the express company and
usal to pay such checks by such non-member banks for lack
per indorsement and the further effort of said Jacksonville

branch to collect such checks over the objection of the drawee banks?

A. 263. We are familiar with the efforts of the Jacksonville Branch of the Federal Reserve Bank of Atlanta to collect checks on non-member state banks in Florida through the express company, but do not know anything about any refusal by such non-member banks to pay such checks for lack of proper indorsement. It is possible that such a point was raised, but we have no recollection thereof.

Q. 264. If you are familiar with these efforts, please relate the facts to the Court.

A. 264. Our answer to this question 263 we adopt as our answer to this question.

Q. 265. If you are not familiar with these facts please secure correspondence between the Jacksonville branch and the Florida non-member banks referred to in all cases where there has been correspondence on such subject and attach them to your answers.

A. 265. As stated in answer to question 263, we are familiar with the efforts of the Jacksonville Branch to collect checks on non-member state banks in Florida through the Express Company. We asked the Jacksonville Branch for the correspondence but they say they have none on this particular subject.

Q. 266. Secure and attach to your answers correspondence with the High Springs Bank of High Springs, Florida, with reference to collecting checks through the express company.

A. 266. There are attached, as Exhibit "K," copies of correspondence with the High Springs Bank, High Springs, Fla., with reference to the par collection of checks but there is no reference in same to collection through the Express Company.

456 Q. 267. Is it not customary for checks on out-of-town banks cleared through the Federal Reserve Bank of Atlanta by the clearing-house banks of Atlanta to bear one indorsement stamp covering indorsement from the clearing-house to the Federal Reserve Bank of Atlanta and from the Federal Reserve Bank of Atlanta to any Federal Reserve Bank or member bank?

A. 267. It is not customary, but it is done by special arrangement in order that the collection of checks payable at distant points may be expedited. The double indorsement stamp will show the name of the depositing bank and that of the Federal Reserve Bank of Atlanta, and it is accepted by order of the Federal Reserve Banks, under our guarantee. When such arrangement is made with a bank and they are permitted to use such stamp, the time that would ordinarily be consumed in writing the cash letter and sending it to the Federal Reserve Bank of Atlanta, to be written up in its own letters to other Federal Reserve Banks, is saved. This method is known as the direct sending privilege. Any checks forwarded under this arrangement are sent direct to the Federal Reserve Bank of the district in which the checks are payable, for collection and credit to the Federal Reserve Bank of Atlanta. This method saves one handling of the checks, and one day in transit time, the procedure having been adopted as a forward step toward

establishment of an expeditious and economic system of check collection. For instance, an Atlanta Bank will receive on deposit late in the day a check for a large amount drawn on Chicago. Not having the direct sending privilege the Atlanta bank would hold the check until the following day and then hand it over to the Federal Reserve Bank of Atlanta for collection, thus losing one day. With the direct sending privilege, it would indorse the check with the double indorsement stamp, write a brief letter to the Federal Reserve Bank of Chicago, and place it in the mail the same afternoon, which would permit the check to be presented in Chicago one day sooner than would have been possible if the direct sending privilege was not in effect.

Q. 268. In whose custody is this joint indorsement stamp for each Atlanta clearing-house bank? Who uses it to indorse the checks? Is the indorsement made by the clearing-house bank or by the Federal Reserve bank? Attach an impression from this stamp to this answer.

A. 268. The stamp is in the custody of the member bank who has obtained the direct sending privilege, and is used by it in indorsing the checks that it sends to Federal Reserve Banks located in other Federal Reserve Districts, for account of the Federal Reserve Bank of Atlanta. The following is a copy of the stamp:

Pay Federal Reserve Bank of Atlanta or order. Prior Indorsements Guaranteed. Fourth National Bank, Atlanta, Georgia. 64-3. Sept. 24, 1921. 64-3.

Pay to the Order of Any Federal Reserve Bank or Member Bank. Federal Reserve Bank of Atlanta. 64-14.

Q. 269. On May 5, 1920, at a hearing before the Federal Reserve Board in Washington, Governor Harding made this statement: "There are about a dozen banks in Washington not remitting at par, thirty or forty in Georgia, and there are some in Arizona, but with that exception they have remitted at par all over the country, and with the exception of some in the South Atlantic and Gulf States." State whether or not Governor Harding's figures as to the banks Georgia not remitting at par at that time, May 5, 1902, were accurate. Give the approximate number of banks not remitting at par at that time in the State of Georgia. In your answer, paragraph 17-A, you state that on January 1, 1921, there were in the United States approximately 30,253 banks and that of that number all but 1,775 of State banks were remitting to the Federal Reserve banks at par. You are now asked to state if those figures, 1,755, were correct. Where did you get your information? In what States are the 1,755 banks located? State the number of non-par remitting banks in each State.

A. 269. We do not know the exact number of banks in Georgia that were not remitting at par on May 5th, 1920. It is quite likely that at the hearing referred to, the reporter misunderstood the name of the State that Governor Harding mentioned as containing "30 or 40" banks not remitting at par, since the Federal Reserve Bank of Atlanta had reported the number of banks in Georgia not remitting

at par on May 1, 1920, to be 513. Governor Harding no doubt ha
reference to the number of banks in Oregon, as, otherwise, he woul
not have further stated "with the exception of some in the Sout
Atlantic and Gulf States." (See diagram showing all par states a
of May 1, 1920, attached hereto as Exhibit "D").

The number of banks not remitting at par January 1, 1920, a
stated in our answer to paragraph 17-A, 1,775, is correc
459 These figures were taken from the report of the Federal Re
serve Board to Congress covering the calendar year ending
December 31, 1920. The states in which the 1,755 banks were lo
cated and the number of non-par remitting banks in each state wer
as follows:

Alabama	2
Florida	1
Georgia	5
Louisiana	10
Mississippi	4
South Carolina	9
Tennessee	14

There are attached also, (as Exhibit "E") diagrams showing th
progress made in the par clearance campaign since the fall of 191
These diagrams are taken from the Federal Reserve Bulletins.

Q. 270. What is the meaning of "par clearance," "par collection
and "par remittance"?

A. 270. "Par Collection" is the act of collecting checks receiv
on deposit at the rate of 100 cents on the dollar.

"Par Remittance" is the act of a drawee bank in remitting fo
checks drawn upon it by its depositors without deducting any charge

"Par Clearance" is the combination of "Par Collection" and "Pa
Remittance", i. e., the collection and remittance of checks at th
rate of 100 cents on the dollar, such as is contemplated by the pro
visions of Sections 13 and 16 of the Federal Reserve Act. In other
words, the Federal Reserve System, through the establish
460 ment of clearing facilities, receives checks on deposit at pa
and is remitted at par for such checks by the drawee ban
The Gold Settlement Funds is a part of the clearance system, an
clearances are made daily through that medium. Par clearance wi
function in the last analysis in the same manner as a city clearin
house, for, while items drawn on one bank would not be exactly offs
as against the items drawn upon another bank, the payments by bo
banks would be either through the medium of checks drawn upo
balances created by checks received on deposit by both banks and sa
to their correspondents for credit, or by the shipment of currency f
the Federal Reserve Bank at the expense of the Federal Reserve Bank

Q. 271. If it was sought to make "a farmer's check worth on
hundred cents on the dollar anywhere in the United States," would
it not be necessary to give the holder of such check immediate credi
at par for the full face of such check?

A. 271. No. The collection of checks anywhere in the United tates at one hundred cents on the dollar means that one hundred nts on the dollar will be available to the holder at the place where e check is deposited, irrespective of the location of the drawee bank. is does not require, however, that the bank with which the check deposited give immediate credit at one hundred cents on the dollar, r more than a bank should give immediate credit on a note desited with it having three or four days to run until maturity. In ier case, if immediate credit is given, it is in the nature of a loan or scount, for which interest may be charged at the current rate until the actual collection of the check or the maturity of the note. In the case of the note, the imposition of an interest charge to cover the time betwen its deposit and the date of maturity es not mean that the note when due is not collected at the rate of ne hundred cents on the dollar. Similarly, in the case of the check, e imposition of a charge to cover interest until funds are actually ceived does not mean that the check has not been collected at the te of one hundred cents on dollar. The deduction by the drawee nk of a so-called exchange charge is an entirely different matter. ere is no real justification whatever for the imposition of such a arge under modern banking conditions. On the other hand, the llecting bank, where immediate credit is given legitimately may ke an interest charge to cover the advance made to its customer. far as the Federal Reserve par clearance system is concerned, it is given in accordance with a published time schedule which based on a very careful estimate of the actual time which experience has shown must elapse between the deposit of the check for llection and the receipt of the proceeds. Credit is given in each se immediately upon the expiration of the time specified in the e schedule, whether the funds have actually been collected then not.

Q. 272. Does not the deferred availability feature of the Federal serve banks' clearance system make all checks worth less than to the extent of interest for the time between acceptance and the e when credit on same would be available?

A. 272. No. See answer to question 271, supra.

Q. 273. What are the sources of revenue of the Federal Reserve banks? How are their earnings derived? Are they not all derived through business with member banks and therefore paid by the member banks?

A. 273. The sources of revenue of the Federal Reserve Banks are ived from the investments made from their paid in capital and cumulated surplus, the reserve deposits of member banks less the serve required to be maintained by law, and the Federal Reserve e currency which they are permitted by law to issue against gold d bills discounted without the payment of any tax. The extent which the privilege of issuing currency entered into the operas of the Federal Reserve Banks during 1920 is shown from the owing:

The daily average earning assets of the Federal Reserve Banks during the year 1920, was		$3,242,68
The average amount of paid in capital was		94,66
The average amount of surplus was		142,42
The average net deposits was	$1,728,067,000	
Less required reserve 35 per cent	604,823,000	
		1,123,24
Leaving available for loan purposes		1,360,34
Making necessary that there be provided for loan purposes		1,882,340

Section 16 of the Federal Reserve Act provides—"The Board sh
have the right, acting through the Federal Reserve Agent, to gr
in whole or in part, or to reject entirely the applications of any F
eral Reserve Bank for Federal Reserve Notes; but to the extent t
such applications may be granted, the Federal Reserve Boa
463 shall, through its local Federal Reserve Agent, supply Fe
eral Reserve Notes to the bank so applying, and such ba
shall be charged with the amount of the notes issued to it, and sh
pay such rate of interest as may be established by the Federal R
serve Board only on that amount of such notes which equals t
total amount of its outstanding Federal Reserve Notes less t
amount of gold or gold certificates held by the Federal Reserve Ag
as collateral security."

The average of Federal Reserve Notes in circulation during 1920 was	$3,145,659,0
Against which the required minimum gold reserve (40%) was	1,258,263,0
Leaving Federal Reserve Notes uncovered by gold to the extent of	1,887,396,0

Thus, assuming that from paid in capital, accumulated surplu
and net deposits available (leaving as available in the deposits t
amount of gold-covered circulating Federal Reserve Notes) there w
$1,360,344,000, available for discount purposes, it is plain th
$1,882,340,000 in capital was really supplied by the Governme
through the medium of Federal Reserve Notes.

Q. 274. In handling the check-clearing accounts of the ban
now on the par list of the Federal Reserve Bank of Atlanta, wh
checks will the Federal Reserve bank accept in payment of ite
sent to its member and correspondent banks for collection? Up
what points is it required that remitting banks send checks?

A. 274. The Federal Reserve Bank of Atlanta will accept fro
its member and clearing member banks drafts which are im
464 mediately available at par including drafts drawn on th
Federal Reserve Bank of Atlanta, on Atlanta commercial
banks, or on member banks located in other cities of the distri
whose drafts in turn are immediately available at par. The Federa
Reserve Bank of Atlanta will accept from non-member banks, i
payment of checks drawn upon such banks, drafts drawn on point

which will remit at par, or currency shipments at the expense of the Federal Reserve Bank of Atlanta.

Q. 275. Will the Federal Reserve Bank accept checks in remittance for its cash letters on such points as Tampa and Pensacola, Fla.; Savannah, Augusta, Macon, Columbus, Albany, and Rome, Ga.; Chattanooga and Knoxville, Tenn.; Anniston, Montgomery, and Mobile, Ala.; Jackson, Vicksburg and Hattiesburg, Miss., or Alexandria and Baton Rouge, La.? If exchange on the above mentioned points is accepted, upon what conditions will same be accepted?

A. 275. The Federal Reserve Bank of Atlanta in payment for items sent them for collection will accept from non-member par remitting banks drafts drawn on banks located in the cities named, if they are collectible at par.

Q. 276. What burden is imposed upon the drawer and drawee banks in complying with such conditions?

A. 276. There is no burden upon the drawer or drawee bank.

Q. 277. If checks on the points mentioned are not acceptable in payment for items drawn on par-remitting banks, what would be the natural effect on the reserve deposits in the banks of those points by banks in smaller cities and towns within their natural trade territory?

A. 277. They are acceptable on the points mentioned if collectible at par.

Q. 278. Have you had any controversy with any of your member banks on the subject of the kind of exchange they shall furnish in remitting for items sent them? If so, state what banks and produce the correspondence with them on this subject.

A. 278. We do not recall any controversy with member banks on the subject referred to, and, upon going over our files, find no such correspondence as that in question.

Q. 279. Under the Federal Reserve system's national par-clearance plan does the Federal Reserve Bank of Atlanta accept checks on any points in the United States outside of Atlanta and give immediate credit at par to its member or correspondent banks? If so, state what points.

A. 279. Yes. The Federal Reserve Bank of Atlanta will give immediate credit at par for checks drawn on member banks in Chattanooga, Tennessee, Macon, Georgia, and Pensacola, Florida, where the drawee banks have made the necessary arrangements. Member banks in other cities are at liberty to make the same arrangements. Immediate credit will also be given for Federal Reserve exchange and Federal Reserve transfer drafts, no matter from what district of the United States they emanate. Under the latter plan, a member bank can make its checks immediately available at any Federal Reserve Bank or Branch in the United States.

Q. 280. Does not the Federal Reserve Bank of Atlanta in effect make a charge for collecting checks for its member and correspondent banks by deferring credit on such checks until it can secure remittance for same?

A. 280. No. There is no charge made for collecting the check. Credit is deferred until the expiration of the time specified in the time schedule. See our answer to question 271, supra.

Q. 281. Is it not the custom of the commercial banks in the reserve centers to absorb this float for their correspondents?

A. 281. Not being acquainted with conditions under which all commercial banks in the reserve centers accept accounts from correspondents, we cannot answer that it is customary to absorb the "float."

Q. 282. Does not the deferred credit feature of the Federal Reserve's par-clearance plan in effect withdraw the amount of such float from effective use to the commerce of the country? If not, how can such items be made available for use?

A. 282. See our answer to question 106, supra.

Q. 283. File a statement showing the amount of such float or deferred-availability items carried by the Federal Reserve Bank of Atlanta on the first weekly statement day of each month since June 1, 1919 to the present time. File such a statement of the combined float on deferred-availability items of all the banks of the Federal Reserve System for the same period. What is the average cost per $1,000 to the Federal Reserve Bank of Atlanta to make collections by presentation at the counters of the drawee banks?

467

A. 283. Documents called for are attached, marked Exhibit "F." The average cost per thousand of making collection in this manner is not known. See answer to question 61, supra.

Q. 284. Under the progressive-interest policy why were the banks penalized in the rates of interest charged?

A. 284. The progressive interest rate policy was not adopted as a penalty, but was put into effect because of the declining reserve percentage of the Federal Reserve Bank of Atlanta and the Federal Reserve System as a whole. At the time progressive rates became effective in the Sixth Federal Reserve District, the Federal Reserve Bank of Atlanta was borrowing money from other Federal Reserve Banks, $8,500,000.00 in order to maintain its lawful reserves against deposits and Federal Reserve note issues. At the same time, the Federal Reserve Bank of Atlanta was extending to member banks accommodation to the extent of $122,925,000.00. This amount was not equally distributed among all member banks. Some member banks were not borrowing at all, others were borrowing reasonable amounts, and a large number were borrowing excessive amounts, and a large proportion of which was for the benefit of non-member banks. Theoretically, each member bank is entitled to discount accommodation to the extent that it contributes to the Federal Reserve Bank's lending power and is arrived at in the following manner:—To the member bank's investment in the capital stock of the Federal Reserve Bank is added 65 per cent of its average reserve balance during a reserve computation period, and the total is multiplied by 2½. This method of calculation is based on the fact that the first two elements in the formula produce a given amount of free gold, and as Federal Reserve notes may be issued against 40 per cent gold and 60 per cent discount bills, the said free gold can

468

produce 2½ times its own amount in Federal Reserve Notes. For purpose of illustration let us assume that Bank "A" has invested in the capital stock of the Federal Reserve Bank $10,000.00
and during a reserve computation period has maintained an average reserve balance of..... 100,000.00

Its contribution to the lending power of the Federal Reserve Bank would be arrived at as follows:

Investment in Capital Stock.....	$10,000.00
65 per cent of average reserve balance for the period..	65,000.00
Total	75,000.00
	2½
	187,500.00

If this member bank called for accommodation to the extent of its theoretical line, namely, its contribution to our lending power, $112,500.00 of the total amount would be a credit supplied by the United States through the medium of the Federal Reserve note issue privilege given to the Federal Reserve Banks tax free, while the remaining $75,000.00 would represent the member bank's own funds with the Federal Reserve Bank. Under Section 4 of the Federal
469 Reserve Act, it is provided that the Board of Directors shall administer the affairs of said Federal Reserve Bank fairly and impartially, and without discrimination in favor of any member bank or banks, and shall, subject to the provisions of the law and the Federal Reserve Board, extend to each member bank such discount, advances and accommodation as may be safely and reasonably made, with due regard for the claims and demands of other member banks. As so large a number of member banks were receiving accommodation in excess of their contribution to the lending power of the Federal Reserve Bank, and others were borrowing to a much lesser degree, or not at all, it was necessary, in order to carry out the intent of Section 4, that measures be adopted which would insure the ability of the Federal Reserve Bank to respond to the demands that might be made upon it by the member banks that were borrowing comparatively small sums, or not at all. In recognition of this situation Congress, by an amendment to Section 14 of the Federal Reserve Act, authorized the establishment of progressive discount rates.

It is interesting to note that notwithstanding the progressive rate schedule which remained in effect until the close of business, October 30, 1920, accommodation extended to member banks upon that date had increased to $182,122,000.00 and the Federal Reserve Bank of Atlanta, because of this increased amount of accommodation extended to member banks for the benefit of agriculture, commerce and industry of our district, and the necessity of maintaining its own required reserve, was borrowing from other Federal Reserve Banks $37,012,000. It is further interesting to note that at the same time,

member banks were extending accommodation to non-mem-
470 ber banks to the extent of approximately $37,000,000.00 and were, at the same time, each respectively borrowing an equal or greater amount than they were lending to their own non-member bank customers.

Q. 285. Was it not because of deficiency in the reserve required by law to be carried with the Federal Reserve Bank of Atlanta?

A. 285. No. The progressive interest policy had no connection whatever with the deficiencies in reserves required by law to be carried with the Federal Reserve Bank of Atlanta.

Q. 286. Is it not true that in nearly if not all cases where excess interest was charged under the progressive interest policy the reserve would have been sufficient if the amounts held on deferred credit of the banks had been added to the amount of reserve actually credited?

A. 286. As stated in our answer to the preceding question the progressive interest policy had no connection with the reserves required by law to be carried with the Federal Reserve Bank of Atlanta.

Q. 287. Attach a copy of the rules of the Federal Reserve Bank of Atlanta under which the progressive interest rates were imposed.

A. 287. In response, there are attached (marked Exhibit "G") copy of Circular No. G-110 and 110-A.

Q. 288. Under these rules what was the possible limit of interest rate that could be charged the bank?

A. 288. There was no limitation.

471 Q. 289. Attach a statement showing the highest and lowest amount of money due to the Federal Reserve Bank of Atlanta by the Federal Reserve Bank of New York on loan during each month from June 1, 1919, to the present time.

A. 289. In response, there is attached document called for, marked Exhibit "H."

Q. 290. Attach a statement showing the highest and lowest amount of money due by the Federal Reserve Bank of Atlanta to the Federal Reserve Bank of New York on loan during each month from June 1, 1919, to the present time.

A. 290. In response, there is attached document called for Marked Exhibit "I."

Q. 291. Attach copies of the weekly statement of the Federal Reserve Bank of Atlanta for the first statement day of each month from June 1, 1919, to the present time.

A. 291. In response, there is attached document called for, marked Exhibit "J."

Q. 292. What banks in the Sixth Federal Reserve District have charged exchange in remitting for their items to the Federal Reserve Bank of Atlanta, or to any of its branches, which exchange has been paid and absorbed by the Federal Reserve Bank of Atlanta or by its branches? Attach a list of all the banks that have charged such exchange from June 1, 1919, to the present time, with the amount and dates of exchange so charged and paid by the Federal Reserve bank.

A. 292. In response, there is attached document called for, marked Exhibit "C," in response to question No. 257.

472 Q. 293. By what authority of law did the Federal Reserve Bank of Atlanta pay such exchange?

A. 293. The Federal Rerserve Act does not permit a Federal Reserve Bank to pay exchange on the remittance of cash items. In those cases where exchange deducted by the drawee bank was allowed, defendant allowed same for the sole and only reason that it had taken said items for collection, believing in good faith that same could be collected at par.

Q. 294. Against what account was such exchange expense charged? Did such exchange, so paid, reduce in any way the profit that would otherwise have accrued to the Federal Reserve Bank of Atlanta? If so, to whom would such profit have gone?

A. 294. The comparatively few charges of this nature that were absorbed by the Federal Reserve Bank of Atlanta were handled as general expense items and had the same effect upon earnings as any other expense items would have. After current expenses and dividends to member banks have been paid, out of the annual earnings, 90% of the re-idue accrues to the United States Government as a franchise tax; and the remaining 10% is added to the surplus which surplus, in the event of liquidation of the Federal Reserve Bank belongs to the United States Government.

Q. 295. Are there any national banks in the Sixth Federal Reserve District that do not avail themselves of the par-clearing system. If so, state what banks.

A. 295. All National banks and all State member banks avail themselves of the clearing system.

473 Q. 296. Are you familiar with the banking and business conditions in the smaller towns and villages of the State of Georgia in which banks are located?

A. 296. Yes, in a general way.

Q. 297. Are you familiar with the general business and banking practices of the banks at those points?

A. 297. Yes, in a general way.

Q. 2498. Are conditions and banking practices in the smaller towns in Georgia similar to those in the smaller towns and villages of the other States of the Sixth Federal Reserve District?

A. 298. We do not know, of our own knowledge, but presume they are.

Q. 299. Are you familiar with the amount of reserve required by the laws of Georgia and the other States of the Sixth District to be carried by State banks?

A. 299. Yes.

Q. 300. How much reserve is required on demand deposits to be carried by State banks in Georgia? How much in Alabama? How much in Florida? How much in Louisiana? How much in Tennessee? This question refers to State Banks not members of the Federal Reserve System.

A. 300. The reserves required to be carried by State Banks in

various states of the Sixth Federal Reserve District against demand deposits, are as follows:

474

	State banks not members of Federal Reserve system.	State banks members of Federal Reserve system
Georgia	15%	7% (a)
Alabama	15%	7% (a)
Florida	20%	20% (b)
Louisiana	20%	7% (a)
Tennessee	10%	7% (a)

(a) State banks which are members of the Federal Reserve System located in cities designated as "Reserve Cities" are required to carry 10% reserve against demand deposits.

(b) The legislatures of all the states in the Sixth Federal Reserve District, with the exception of Florida, have passed amendments to their banking laws under which reserves carried with the Federal Reserve Bank of Atlanta by state banking institutions which are members thereof are considered as complying with the state requirements. This is apparently recognition by the state banking departments that the minimizing of "float" and pyramided balances through the operation of the Federal Reserve par clearing system no longer makes it necessary that a larger percentage be maintained and further apparently recognizes that a reserve balance with the Federal Reserve Bank is actual reserve and not subject to pyramiding or "float" reserve.

Q. 301. In what form are the required reserves usually
475 carried by such banks? About what proportion of cash? About what proportion in balances on deposit with duly approved Reserve agents?

A. 301. The form of reserves and proportions that are carried in cash on deposit with Reserve agents vary in the different states. There is no precise ratio.

Q. 302. Is it not true that the amount of capital stock of the banks in the smaller towns and villages that is justified by the volume of their business and earning capacity is necessarily small?

A. 302. The amount of capital stock of banks in the smaller towns and villages that is justified by the volume of their business would be a matter of opinion based upon a great many factors, and there are few banks who could not derive sufficient earnings from the deposits of their customers to meet expenses, dividends and upbuilding of surplus, if reasonable capital were employed.

Q. 303. Is not the volume of business in the smaller towns and villages very small as compared to the volume in other financial and commercial centers?

A. 303. The actual volume of business in the smaller towns and villages is, of course, very much smaller than the actual volume in the large financial and commercial centers but the proportional amount of business is much the same.

Q. 304. Is it not true that in most instances the volume of business to be had and handled by such banks would be too small to warrant any substantial increase in the capitalization of this class of banks.

A. 304. We cannot answer this question generally. The matter depends entirely upon the local conditions in each particular case.

476 Q. 305. Would it be sound and safe banking for one of these banks located in a small village or town to carry all of its reserves in cash in its vault?

A. 305. We cannot say whether it would be sound and safe banking for one of those banks located in a small village to carry all of its reserve in cash in its vault, but we do not see any necessity for its doing so.

Q. 306. Would not such a practice invite loss from theft, burglary, and otherwise, thus diminishing the safety of the bank's deposits and its usefulness to the community?

A. 306. Here again it would depend entirely upon local conditions and the urgency of the necessity to keep so much cash on hand.

Q. 307. Is it not true that the small capital and limited business handled by such banks do not justify the expenditure of a sufficient amount of money to secure the protection that should be had for all their reserves not kept in cash in the banks?

A. 307. This question is not sufficiently clear to enable us to determine what information the propounder desires.

Q. 308. Is it not now the general custom for State Banks not on the Federal Reserve's par list to carry their reserves over and above their expected local daily needs with approved Reserve agents and correspondents in near-by commercial and financial centers and receive a substantial interest on average daily balances?

A. 308. State banks, whether or not on the Federal Reserve par list, carry balances with approved Reserve Agents and 477 correspondents in near-by communities and commercial centers and receive what is regarded as a reasonable rate of interest on the average daily collected balances.

Q. 309. Would it not be bad banking policy for State banks to give up this interest and the additional security in keeping their funds in the better-protected vaults of the banks in larger centers in order to concentrate their reserves in cash in their own vaults and safes?

A. 309. What constitutes bad banking policy is a very difficult question to determine. There is no necessity for country banks to keep all their funds in the form of cash in their own vaults, whether they agree to remit at par through the mails or whether they remit for checks presented across their counter under the proposed plan. Furthermore, it should be remembered that where the checks of a non-member country bank are collectible at par through the Federal Reserve Banks, it will no longer be necessary for such a non-member bank to maintain balances with a number of correspondent banks, for the purpose of check collection, on which it

receives only 2% interest. On the contrary, a balance with the Federal Reserve Bank of its District or a balance with one or perhaps two satisfactory city correspondents will be sufficient. Consequently, considerable funds which are now kept on deposit with numerous correspondents at low interest rates will be released, and so will be available for loan purposes at home at very substantially higher rates of interest, thus enabling the bank in question to more than offset the loss in exchange charges.

Q. 310. Was it not also the general and also universal practice of national banks in the smaller communities to keep large
478 parts of their reserves with duly approved Reserve agents and correspondents in larger centers prior to the establishment of the Federal Reserve system's par-clearance plan?

A. 310. It was the general custom for National banks in smaller communities to keep two-thirds of their reserves with duly approved reserve agents and correspondents in larger centers prior to the establishment of the Federal Reserve System.

Q. 311. If the Federal Reserve Bank of Atlanta owned or held for collection checks drawn on the bank in Bartow, Ga., and the bank in Bartow, Ga., had declined to remit at par in Atlanta exchange, and the agent of the Federal Reserve Bank of Atlanta appeared at the teller's window of the bank at Bartow and presented such checks duly and properly indorsed and with proper identification and primarily demanded the money, or a credit to be placed in Atlanta, and the bank of Bartow tendered such agent exchange on Atlanta, at par, instead of cash, why would such agent decline to accept exchange on Atlanta for the full amount of said checks of the same character of exchange that would have been acceptable if sent by mail under the par-clearance agreement.

A. 311. We do not know of any agent who has declined to accept such exchange nor is it contemplated that an agent will be instructed to do so. See our answer to question 6, supra.

Q. 312. With whom did you consult as to your replies to these questions? Were you duly sworn before you answered these ques-
tions? Are your answers in your own language or were they
479 prepared for your approval? Do you understand that each and all of them represent your sworn statement?

A. 312. With our Counsel. Yes. They were prepared jointly by the individual defendants and are in their own languauge. Yes.

Q. 313. Who has been furnished a copy? What consultation or comparison has taken place between the parties to this case as regards these replies?

A. 313. No one other than Counsel and individual defendants. The questions propounded to joint defendants have been jointly answered.

Q. 314. Have you seen up to the time of filing of this answer the answers of the others?

A. 314. The questions were addressed to us jointly and we have answered them jointly.

Q. 315. Were these questions submitted to the Federal Reserve Board before you answered them?

A. 315. No.

Q. 316. Attach true copies of any communication from the Federal Reserve Board or any of its officers, agents, or attorneys as to your answers to all the interrogatories propounded to you.

A. 316. There were no communications.

M. B. WELLBORN makes answer to the interrogatories specially propounded to him, numbered 317 to 328, both inclusive, as follows, to-wit:

Q. 317. Do you recall an article appearing in the New Orleans Item a few days after the bill was filed in this case in which it was stated that a national campaign has been launched by the Federal Reserve Board to compel observance of provisions of the Federal Reserve Act relative to the collection of checks at par?

A. 317. I do not recall seeing the article referred to.

Q. 318. Is it not true that you selected one Marcus Walker, manager of the local Federal Reserve Bank at New Orleans, to actively launch the campaign for par clearance in New Orleans?

A. 318. As the Manager of the Branch, he had charge of our work in that section in making efforts to bring around a par clearance.

Q. 319. Was not this campaign to be directed particularly against recalcitrant banks in the Sixth Federal Reserve District?

A. 319. In giving him instructions, I never used the word "recalcitrant."

Q. 320. That article quoted you as saying that "the practice of charging for the collection of checks is a burden and an unnecessary toll on commerce, and that the universal application of the practice of collecting checks at par would mean a tremendous saving to the commercial and the business organizations all over the United States and particularly in this section," did it not?

A. 320. If the article quoted me as using the language set out in quotations in question 320, it expressed an idea and belief which I have stated repeatedly.

Q. 321. Do you still believe that such a course would mean a tremendous saving to commercial and business organization? If so, to what class of commercial and business organizations would it be a saving?

A. 321. Yes, it would mean a saving to every individual and every commercial and business organization that now pay the so-called exchange charge, either directly or indirectly. Primarily it would be a saving to a customer of the bank who draws the check and sends it away in payment of things, because ultimately the exchange charge is paid by the sender of the check in the price of the goods put on by the merchant to protect himself against such charges.

Q. 322. Would not necessarily the amount of said saving represent the amount of loss to the banks performing the service without charge?

A. 322. I do not think that the loss of exchange would be such curtailment of the profits of the bank preventing them from earning a reasonable profit.

Q. 323. Why should the country banks of the Sixth Federal Reserve District perform valuable services for the city banks, the manufacturers, the wholesale merchants, and the mail-order houses for nothing?

A. 323. The payment of a depositor's check at par, without any deduction for remittance, is not a service for the city banks, the manufacturers, the wholesale merchants or the mail-order houses. It is, if a service, at all, a service for the drawer of the check who is obligated to pay his engagements in full. If such service is rendered the depositor without charge, such service should be the case because the bank has the use of his deposit and through the use of such deposits, derives the greater amount of its profits. A deduction from the face of a check is really a charge against the cus-
482 tomer of the bank who draws the check. There is no more reason why exchange should be taken from a customer's check when presented through the mails than when presented at the counter.

Q. 324. Is not the result of such a saving, if it is brought about the mere transfer of money heretofore made by the banks from their exchange charges to the profit heretofore made by the houses who accept such checks drawn on such banks without requiring the cost of transmitting funds to be paid by their customers, and does not the result relieve such business organizations from assuming such costs themselves?

A. 324. No, for the reason stated in answer to question- 322 and 323. The wholesaler regards exchange as a tax which he passes to the ultimate consumer who is the drawer of the check, he being the purchaser of the goods. If the tax is removed, the price of the goods would be proportionately lower.

Q. 325. Was it not true when the New Orleans article was published, as stated, that a large number of banks had steadfastly refused to accede to the requests of the Federal Reserve banks to perform this service for nothing, but that all member banks were compelled to comply with the provisions requiring remittance at par?

A. 325. It is true that all member banks were required to remit at par but I do not regard it as true that the non-member banks had steadfastly stood against this practice. In our so-called campaign in sending men out direct to aid us in our efforts for par clearance remittance, we hoped to be able to convince them of the
483 general advantages of par clearance, and that our so-called campaign was for the purpose of showing the non-member banks that the facilities that we offered to aid them in their collections would offset to a considerable extent the exchange they had been exacting on their customers' checks.

Q. 326. Is it not true that Mr. Walker stated, with your approval, and had the statement published in said article, that if a non-member bank refused to remit at par a special messenger would be sent to its counter and the currency demanded, and that the effect of such

practice would be to compel the recalcitrant bank to accede to the
r-collection system, or else it would have to draw considerably upon
cash reserve?

A. 326. I do not recall any special instructions given to Mr.
alker, but it was our intention that if non-member banks did not
mit at par, in response to our requests and offers to furnish them
ith the stationery, postage, etc., that we would, in order to collect
e checks for our depositors, if necessary employ special means
rough agents, express companies or otherwise, to present checks to
e counters of the banks for payment. When the restraining order
s granted in this case, our campaign had not advanced sufficiently
r for us to work out all those details and for that reason no specific
structions had been given to anybody as to what medium they
ould accept in payment, as I recall.

Q. 327. Was that statement not true when made, and is it not
ue now, and is that not the compulsion that has been employed
force a large number of non-member banks into the par-clearance
system?

84 A. 327. The Federal Reserve Bank of Atlanta has never at any time, or never intends at any time, to employ methods compulsion against non-member banks in the matter of par clearnce or in any other matter. In this particular matter of par clearnce, it is true we did use all of the legitimate business arguments d persuasions with non-member banks in our endeavor to conince them of the advantage of our collection facilities but that is all e ever did or ever intend to do. I also adopt my answer to quesn 326 by way of further answer to this question.

Q. 328. Was not this article in the New Orleans Item the result a visit to you by a reporter of the New Orleans Item at the Federal eserve Bank in Atlanta, and did you not authorize the publication that article?

A. 328. I have no recollection of such an incident or matter. It ight have happened but if it did, I do not recall it now.

Jos. A. McCord makes answer to the interrogatories specially proounded to him, numbered 329 to 333, both inclusive, as follows, -wit:

Q. 329. A short time prior to sending out the letter of December 3, 1919, notifying non-member banks in Georgia that they would e placed on the par list and threatening to use methods to compel em to get on the par list that would prove embarrassing, expensive, d annoying to them did you not have a conversation with L. P. Patillo, president of the Bank of Buford, on the subject?

85 A. 329. I know L. P. Patillo, president of the Bank of Buford. I have known him for quite a number of years. I ave had conversation with him occasionally. I do not remember e exact date of the conversation to which this interrogatory refers. may have had the conversation just prior to the sending out of the tter of December 23, 1919, or it may have been some thereafter.

Q. 330. Did he not protest against the coercive methods you proosed to use?

A. 330. Mr. Patillo in discussing the subject of par clearance me, stated that he protested to having to remit at par, as that wa of the sources of revenue to which he believed that his bank was entitled. In our conversation I stated to him that his bank w of course first be given the privilege of deciding whether it wou mit at par or not. During our conversation I undertook to sh Mr. Patillo where it would be to his advantage to remit to us a for such checks as we had on his bank, regardless of whethe bank became a member of the Federal Reserve System or no simply becoming a remitting bank. I stated to him that we w offer the facilities of collecting all such checks as we could colle par, and if we undertook to collect at par for all points, that we w give him the benefit of sending to us for credit all such checks a might receive that he desired to send us. I explained to him tha could have the privilege of sending us exchange on his correspo bank in payment for such items as we had on this bank; I als plained that we would receive from him currency or coin a

expense in payment for such items as he cared to make p

486 tance for, if the checks he had coming to us were not of ficient volume to take care of checks we received on him.

Q. 331. Did you not strike the desk with your fist and declar his bank would be compelled to submit and become a member o Federal Reserve system or remit at par?

A. 331. In answer to this interrogatory wish to say that it i of my common customs, or habits, when I am earnestly interes a proposition, to strike my desk with my fist, and as I was inter in this proposition, I possibly did strike my desk with my fist. I state emphatically that I did not tell Mr. Patillo, and neither h I stated to any other banker that they would be compelled to su and become a member of the Federal Reserve System, or to rem par.

Q. 332. If the time inquired about—namely, before the da said letter—is not correct, did you not have such a conversation th before or after said date with said L. P. Patillo substantially to effect inquired about above?

A. 332. My answer to 329 fully covers this subject. At this I do not remember whether my conversation with Mr. Patillo before the sending out of said letter of December 23, 1919, or a said date; but am inclined to believe that the conference possibly after the date referred to.

Q. 333. Whether or not you struck the desk with your fist, did y not make the statement, substantially, that Mr. Patillo's bank wo be compelled to submit to the wishes and plans of the Federal Rese Bank of Atlanta?

487 A. 333. Possibly in my earnestness I did hit my desk w my fist, but not in any spirit of anger or in any spirit coercion, but possibly to emphasize the earnestness with which I discussing the subject. I did not make the statement, substanti that Mr. Patillo's bank would be compelled to submit to the wis and plans of the Federal Reserve Bank of Atlanta. My only st

t to him was that if he declined to remit for checks on his bank ar, that we possibly would have to arrange to present said checks is bank window for payment.

M. W. BELL makes answer to the interrogatories specially pro-nded to him, numbered 334 to 341, both inclusive, as follows, it:

Q. 334. Did you or not state to Mr. Albert N. Tumlin, of Cave ings, Ga., that the purpose of the Federal Reserve Board in the eighteen months was to bring about money stringency through itations on the amount of credit to be extended through Federal rve Banks and the rates of interest thereon, the purpose being reby to force non-member banks to join the Federal Reserve Sys-, and did you not advise the same Mr. Tumlin that this money ngency was to be produced through the joint action of the Fed-l Reserve Board and the Federal Reserve Banks in order to force n-member banks to join the Federal Reserve System?

A. 334. I did not.

Q. 335. Shortly after the bill was filed in this case, did you not make a public address before the Rotary Club, in the city of Atlanta, in which you stated that corrective measures were to be employed against non-member banks to compel them to re-t at par?

A. 335. In my address before the Rotary Club, I stated that correc-measures would be employed which would no doubt eventually minate the so-called exchange charge made by banks for remitting payment of checks drawn on themselves.

Q. 336. What corrective measures did you have in mind? State ly, please.

A. 336. The provisions of the Federal Reserve Act as interpreted the Federal Reserve Board and the Attorney General of the ited States, pertaining to the par collection of checks by the Fed-l Reserve Banks.

Q. 337. Did you not in the same address assert that charging ex-nge for the remittance of the proceeds of a check was a vice that st be eradicated? How did you expect to eradicate this vice?

A. 337. I stated that the practice of charging exchange for re-ning in payment of checks was regarded as a vicious one that uld eventually be eliminated. (Refer to question 336 for the mainder of this answer.)

Q. 338. Was it not by the use of coercive measures to compel the n-member banks to remit at par, substantially as set forth in this ? If not, what measures did you have in mind? State fully.

A. 338. I have never at any time referred to coercion or used that m in this connection. The measures I had in mind are set forth in my answer to question 336.

Q. 339. Do you remember, in 1919, or the early part of 1920, visiting Mr. Monroe, of the Quincy State Bank, incy, Fla., and endeavoring to induce him to join the Federal serve System? Do you remember during that conversation stat-

ing to Mr. Monroe in substance the following: "The time come, Mr. Monroe, when the Federal Reserve Bank will refu handle your paper, and then what?

A. 339. In my conversation with Mr. Mark W. Munroe, P dent of the Quincy State Bank, Quincy, Florida, I stated so cl that there should have been no possibility of misunderstan that if the future of banking could be judged by the past, was a possibility of the development in this country of finan disturbances or money stringencies of such proportions that Federal Reserve Banks might have to restrict discount operat in such a manner as to insure the resources of the Federal Re Banks being used exclusively to aid member banks to meet the quirements of their commercial customers and to prevent non-m ber banks from shifting to the Federal Reserve System, thro the medium of member banks, their needs for financial assist and if I remember correctly, Mr. Munroe agreed with the view I expressed that under such circumstances the non-member ba could not expect the resources of the Federal Reserve System to made available to them through the member banks; for the rea that the non-member banks contributed nothing whatever to development of the financial strength of the System, and, the fore, could not expect to be its beneficiaries.

Q. 340. Please attach copies of correspondence between the Fe eral Reserve Bank of Atlanta and the Quincy State Ba
490 or between the Jacksonville Branch and the Quincy St Bank, with reference both to clearing at par and the po on which checks would be accepted in payment for clearances.

A. 340. For answer to this question, see Exhibit "L."

Q. 341. State how much exchange was paid by the Federal R serve Bank of Atlanta or its branch at Jacksonville to the Fi National Bank of Quincy, Fla., for checks drawn on the Qui State Bank of Quincy, Fla., and cleared through the Federal R serve Bank from October 1, 1919, to the present time. If this formation is not in your possession, please secure same from t Jacksonville branch.

A. 341. It is impossible at this time to determine how much exchange, if any, was paid to the First National Bank, Quin Florida. It is not possible to locate the correspondence which t place at the time the Quincy State Bank withdrew from its par mitting arrangement.

L. C. Adelson makes answer to the interrogatories specially pr pounded to him, numbered 342 to 352, both inclusive, as follo to-wit:

Q. 342. Please state what business you were engaged in bef you became deputy governor for the Federal Reserve Bank of At lanta.

A. 342. I was Assistant Secretary of the Federal Reserve Boa

Q. 343. Were you at any time associated in any capacity wi

Mr. W. P. G. Harding, of the Federal Reserve Board prior to your connection with the Federal Reserve Bank of Atlanta? If so, in what capacity or capacities and for what th of time?

343. Yes, I was private secretary to Mr. Harding from Jan- 1, 1914, while he was president of the First National Bank, ingham, until he left Birmingham in July to become a mem- of the Federal Reserve Board. I again became his private sec- y in Washington on August 24, 1914, remaining with him in capacity until sometime in 1915, after which I was in turn eral Reserve examiner until November, 1917; Assistant Direc- Division Foreign Exchange Federal Reserve Board. From No- ber, 1917, to May, 1918, and Assistant Secretary, Federal Re- e Board from that date until March, 1919.

344. Did you not, on or about June 11, 1919, state in a letter he Alma State Bank that "the twelve Federal Reserve Banks uniting in their efforts to bring about the establishment of a ional par list, and rapid strides are now being made in that ction?" Please state how the twelve Federal Reserve Banks e then uniting in their efforts to bring about the establishment a national par list. How rapid have been their strides in that ction since that time? Give details as to the efforts employed said Reserve banks, singly and in conjunction, then and since t time, to accomplish the purpose stated.

A. 344. Yes, I did make the statement referred to. The state- nt that "the twelve Federal Reserve Banks were uniting in their orts to bring about the establishment of a national par list and id strides were being made in that direction" was predicated upon the unity of purpose that exists among Federal Re- serve Banks in carrying out the provisions of the Federal Reserve Act. In saying that the Federal Reserve Banks are ited" or "uniting," it is sought to convey the same meaning would be conveyed by saying that the states of Georgia, Ala- a, Florida, and other states composing the Union are "United tes." Each state in the United States of America has its own stitution, its own bodies of law makers, and directs its own in- al affairs in a way that will not conflict with the Constitution the United States and the statutes that may be enacted by the ngress of the United States. Likewise, each Federal Reserve nk has its own by-laws, its own board of directors and directs own internal affairs in a way that will not conflict with the pro- ions of the Federal Reserve Act, and the regulations as may be nulgated pursuant thereto by the Federal Reserve Board. Each deral Reserve Bank, in its own way, was endeavoring to make its rict entirely par. The progress that has been made toward the blishment of a national par list between June 15, 1919, and gust 15, 1921, may be visualized from the following figures:

Date.	Total number of banks.	Number of banks on par list.
June 15, 1919.....	28,930	20,621
August 15, 1921.....	30,420	28,342
Increase	1,490	7,721

I am not informed of the detailed manner in which other Federal Reserve Banks proceeded. They did not work in
493 junction with each other, but each formulated its own pl
The efforts of the Federal Reserve Bank of Atlanta to bringing about a national par list were through correspondence in some cases through oral solicitation to endeavor to gain the sent of non par remitting banks to remit at par, pointing out postage would be furnished for return remittance, or when convenient to remit in currency, the expense of shipment would be borne by the Federal Reserve Bank, and that the privilege maintaining a non-member bank clearing account for the collection of items drawn on banks shown in our par list was open them.

Q. 345. Is not the uniform basis of said efforts the presentation checks on non-par banks for payment in currency and the refu to accept bank drafts in payment of such checks on condition the payee bank will agree to thereafter remit at par for all checks transmitted to it in regular course of business?

A. 345. I do not know of any uniform basis or plan adopted the Federal Reserve Banks under which checks on non-par banks were or are to be presented for payment in currency and bank drafts refused. The Federal Reserve Bank of Atlanta considered several plans of making collection in a regular and lawful manner, and has decided that any non-member bank preferring not to remit by draft at par, but instead to have checks drawn upon them presented at their counter, will be permitted the option of remitting by satisfactory exchange or currency.

Q. 346. Did you, on June 11, 1919, write a non-member bank and in that letter, referred to in question No. 270, say: "The twelve Federal Reserve banks are uniting in their efforts to bring
494 about the establishment of a national par list and rapid strides are now being made in that direction?" Was this statement true?

A. 346. For answer to this question, see answer to question 344.

Q. 347. When did they first unite? Why did they unite? Are they still united on that subject?

A. 347. The Federal Reserve Banks have been united (in the sense that the use of the word "united" is explained in answer to question 344, supra) in the purpose of bringing about a national par list ever since the Federal Reserve Act was amended by Congress in such a manner as to indicate that par clearance of checks was intended to be a function of the Federal Reserve System. They are

united on the subject of par clearance in order to carry out the purpose and intent of the Federal Reserve Act. Yes.

Q. 348. Have they ever dissolved that unity of purpose? If so, when and why?

A. 348. There would be no occasion to dissolve the unity of purpose of carrying out the provisions of the Act.

Q. 349. How was that unity of action brought about? Through what process or channels did they get together on it? What officers conferred about it? Give their names.

A. 349. The unity of action was brought about by the need to properly administer the functions of the Federal Reserve System as contemplated by the Act. There was no process or channel necessary for them to get together on it other than the express provisions of the Act and the Regulations of the Federal Reserve Board, issued pursuant thereto. At various conferences of the Governors of the Federal Reserve Banks, the subject of par clearance was discussed in connection with numerous other subjects.

Q. 350. Did they agree upon a plan all were to follow?

A. 350. No. Each Federal Reserve Bank directs its own operations.

Q. 351. Could they unite on different plans?

A. 351. Yes. They could be united in the purpose but work along different lines to bring about the result contemplated by the Act. Similarly, each state in the Union is united in the purpose, but works along different lines to bring about a consummation of the end sought by the Declaration of Independence.

Q. 352. What was the plan agreed upon?

A. 352. There was no plan agreed upon.

Q. 353. Please attach to your answers to these interrogatories the following data, insofar as it appears in your record and files:

Q. 353-A. A list of the State Banks in Georgia who are members of the Federal Reserve Bank of Atlanta or the record showing same.

A. 353-A. See Exhibit "M."

Q. 353-B. A statement of the Federal Reserve Bank of Atlanta as of the week ending June 25, 1921.

A. 353-B. See Exhibit "N."

Q. 353-C. If correspondence on the subject of par collections was had between the offices and directors of the Federal Reserve Bank of Atlanta and the Federal Reserve Board at Washington, or with any other Federal Reserve Bank in the system, over the telephone and any record of such conversations was kept, attach as a part of these answers copy of such records.

A. 353-C. See Exhibit "A" in answer to question 10.

Q. 353-D. Please likewise attach copies of all letters from the officers and directors of the Federal Reserve Bank of Atlanta to non-member banks in the Sixth Federal Reserve District that were sent in an effort to induce such banks to remit at par.

A. 353-D. See Exhibit "O."

Q. 353-E. Attach to your answers a record of exchange paid to the La Grange National Bank of La Grange, Ga., from October 1, 1919,

to the present time on checks drawn on the La Grange Banks and cleared through the Federal Reserve Bank and sent to the La Grange National Bank for collection and remittance.

A. 353-E. Our records do not show any exchange paid to the La Grange National Bank, La Grange, Georgia, from October 1, 1919, to the present time on checks drawn on the La Grange banks and sent to the La Grange National Bank for collection and remittance.

Q. 353-F. Please attach to your answers letter received from the First National Bank at Cartersville and copies of your letters to the First National Bank of Cartersville in the matter of handling
497 items on their State bank competitors; also correspondence between the Federal Reserve Bank of Atlanta and the said First National Bank of Cartersville on the subject of exchange and par remittance at any time during the past two years.

A. 353-F. See Exhibit "P."

Q. 353-G. Attach similar letters and correspondence with any and all other national banks in the Sixth Federal Reserve District.

A. 353-G. See Exhibit "Q."

Q. 353-H. Attach a carbon copy of a letter from Mr. J. A. McCord to a national bank written the last week in January, 1920, urging said bank to handle collections on State banks in its town and copy of such bank's letter refusing to do so.

A. 353-H. In the absence of the name of the national bank to whom the letter referred to in this question was addressed, it would be an almost impossible task to locate the one desired.

Q. 353-I. Attach Mr. Pool's letter of resignation or copy thereof, together with copies of all correspondence bearing on the subject between Mr. Pool and the Federal Reserve Bank of Atlanta and its officers, or between Mr. Pool and the Federal Reserve Branch at New Orleans, or between the Atlanta Bank and the New Orleans branch, or between the Atlanta Bank or New Orleans Branch and the Federal Reserve Board or its members.

A. 351-I. As stated in answer to question 70, supra, Mr. Pool did
498 not resign as a director of the New Orleans Branch of the Federal Reserve Bank of Atlanta. He served for the full length of the term for which he was appointed.

Q. 353-J. A statement, consolidated, of the combined condition of the twelve Federal Reserve Banks in the United States for the same week, or else a transcript of the records showing the same.

A. 353-J. See Exhibit "R." Statement furnished is as of the week Mr. Pool's term of office expired.

Q. 353-K. A statement of the earnings of the Federal Reserve Bank of Atlanta, for the year 1920, or the records showing the same, itemized as to distribution headings.

A. 353-K. See Exhibit "S."

Q. 353-L. A statement showing the expenses of operating the Federal Reserve Bank of Atlanta for each calendar year since January 1, 1915, and the items thereof by distribution heads, or else the records showing the same.

A. 353-L. See Exhibit "T."

Q. 353-M. A statement of the dividends paid by the Federal Re-

erve Bank of Atlanta to its stockholders for each calendar year since January 1, 1915, or the records showing the same.

A. 353-M. See Exhibit "U."

Q. 353-N. A statement of the earnings of the Federal Reserve Bank of Atlanta, carried from its surplus account, for each calendar year since January 1, 1915, or the records showing same.

A. 353-N. See Exhibit "V."

499 Q. 353-O. A statement of the earnings paid to the United States Treasury by the Federal Reserve Bank of Atlanta for each calendar year since January 1, 1915, or the records showing the same.

A. 353-O. See Exhibit "W."

Q. 353-P. A statement of the number and amount of drafts, with bills of lading attached, collected by the Federal Reserve Bank of Atlanta direct from the drawees of such drafts from January 1, 1919, to July 1, 1921, or the records showing same.

A. 353-P. See Exhibit "X."

Q. 353-Q. A statement of the amount of the credit of member banks of the Federal Reserve Bank of Atlanta doing business in the Sixth Federal Reserve District, with the name and address of each such member, carried as reserves for such bank as of the close of business June 30, 1921, or else the records showing the same.

A. 353-Q. See Exhibit "Y."

Q. 353-R. The regulations of the Federal Reserve Bank of Atlanta, or regulations of the Federal Reserve Board to which the Federal Reserve Bank of Atlanta conforms, relative to handling non-member clearing accounts and the time for crediting remittances thereto which are in transit.

A. 353-R. See Exhibit "Z."

Q. 353-S. Like regulations as to uncollected-funds accounts in connection with such clearing accounts.

A. 353-S. See Exhibit "AA."

500 Q. 353-T. All writings, records, and documents showing methods already formulated or in process of formulation to be adopted or employed by the Federal Reserve Bank of Atlanta for the collection of checks drawn on banks in the Sixth Federal Reserve District that refuse to remit at par, which said methods were referred to in said letter of December 23, 1919, attached as Exhibit B to the bill in this case.

A. 353-T. There are no writings, records or documents relating to methods formulated or in process of formulation to be adopted or employed by the Federal Reserve Bank of Atlanta. As stated in answer to previous questions, various methods were informally discussed but no definite plan had been adopted at the time the restraining order was filed. See answer to question 25, supra.

Q. 353-U. Please attach as part of the answer to these inter-ogatories all minutes and records showing the action of all meetings of the board of directors of the Federal Reserve Bank of Atlanta dealing with the subject of par collection.

A. 353-U. See Exhibit "BB."

Q. 353-V. Please likewise attach all letters, telegrams, correspondence, circulars, or written communications of any character between the Federal Reserve Board and the officers and directors of the Federal Reserve Bank of Atlanta on the subject of par collections or in any way bearing thereon.

A. 353-V. See Exhibit "A" in answer to question 10, supra.

Q. 353-W. Please likewise attach all correspondence, whether by letter, telegram, or other writing, between the officers and
501 directors of the Federal Reserve Bank of Atlanta and any other Federal Reserve Bank in the United States on the subject of par collections or in any way bearing thereon.

A. 353-W. We have no recollection of any letters, telegrams or other writing between the officers and directors of the Federal Reserve Bank of Atlanta and any other Federal Reserve Bank, except such correspondence as incidental to the handling of transit operations; such as, advices of non-payment of items, advices of payment of items, requesting or giving instructions as to the handling of items incorrectly routed, and the disposition of purely collection items inadvertently enclosed with cash letters.

Q. 353-X. Attach a list of all State Banks and Trust Companies in the Sixth Federal Reserve District that were members of the Federal Reserve Bank of Atlanta on January 15, 1920, and a list of all such Banks and Trust Companies that have taken membership in said Reserve Banks since that date. Also a list of State Banks in said District that have become National Banks since January 15, 1920.

A. 353-X. See Exhibit "CC."

IN THE

District Court of the United States for the Northern District of Georgia.

No. 138. In Equity.

AMERICAN BANK & TRUST CO. et al., Plaintiffs,

vs.

FEDERAL RESERVE BANK OF ATLANTA et al., Defendants.

GEORGIA,
Fulton County:

Before me, the undersigned Notary Public in and for said County, personally appeared M. B. Wellborn, Joseph A. McCord, L.
502 C. Adelson and M. W. Bell, who being severally and separately sworn, depose and say as follows, each of said deponents making this affidavit for himself:

Deponents are defendants in the case of American Bank & Trust Company, et al., vs. Federal Reserve Bank of Atlanta, et al., and as such defendants, have made joint answer to certain interrogatories

propounded in said cause by the plaintiffs therein to said defendants, as stated in the caption or preamble to the above and foregoing answers. Each of said deponents has made individual answers to said interrogatories propounded by the said plaintiffs to said defendants, separately and respectively.

Deponents say that they have read over the above and foregoing answers to said interrogatories, and are familiar therewith, and that the same are their answers jointly or separately made, as indicated in the above and foregoing document which contains said answers.

Each deponent says that the answers made by him, whether jointly or seprately, are true, except that where answers are made upon information and belief, the same are true according to the best of deponent's knowledge, information and belief. M. B. Wellborn. Joseph A. McCord. L. C. Adelson. M. W. Bell.

Sworn to subscribed before me, this 30th day of September, 1921. Spurgeon Cowart, Notary Public, State at Large.

503 IN THE

United States District Court for the Northern District of Georgia.

In Equity. No. 138.

[Title omitted.]

Deposition of Honorable W. P. G. Harding, Governor of the Federal Reserve Board.

Washington, D. C., Friday, July 22, 1921.

By virtue of notice served by Solicitors for the Plaintiffs in the above stated case on the Solicitors for the Defendants therein, pursuant to the provisions of Section 863, et seq. of the Revised Statutes of the United States, I. George W. Reik, notary public duly appointed and qualified in and for the District of Columbia,
504 have caused Hon. W. P. G. Harding, the witness named in said notice, to appear pursuant to said notice, and the said witness being first duly sworn deposes as follows.

For the convenience of said witness the place and time of said examination was by consent changed from room 307 Columbian building, 416 Fifth St. N. W., Washington, D. C., at 3 o'clock p. m., to room 298 Treasury building, Washington, D. C., which is the office of said witness, at 9.30 o'clock a. m., Friday, July 22, 1921.

Present: On behalf of the plaintiffs, Alexander W. Smith, Esq., of Atlanta, Ga.; on behalf of the defendants, Hon. John W. Davis, of New York City, and H. N. Randolph, Esq., of Atlanta, Ga.

It was stipulated that all objections to the questions in this deposition are reserved for presentation to the court without notation to the Commissioner without prejudice to either side; except to the

form of the question, and if objection is made on account of the question being leading, it shall be noted at the time.

Direct examination.

By Mr. Smith:

Q. You are Governor of the Federal Reserve Board?
A. Yes, sir.
Q. How long have you been in that position?
A. Since the 10th of August, 1916.

505 Q. Under the law the Secretary of the Treasury and the Comptroller of the Currency are ex officio members of the board, as I understand it?
A. Yes.
Q. Will you be good enough to give the names of the other members besides yourself and the ex officio members?
A. Honorable Andrew W. Mellon, Secretary of the Treasury, ex officio Chairman, address, Treasury Department, Washington; Edmund Platt, of Poughkeepsie, New York, Vice-Governor of the board, temporary residence, Washington; Charles S. Hamlin, of Boston, member of the board, temporary address, Washington; Adolph C. Miller, of Berkley, California, member of the board, temporary residence, Washington; John R. Mitchell, of St. Paul, Minnesota, member of the board, temporary address, Washington; Daniel R. Crissinger, of Marion, Ohio, Comptroller of the Currency and ex officio member of the board, temporary residence, Washington; and myself of Birmingham, Alabama.
Q. Governor, it appears that sometime prior to December 29, 1919, you addressed a letter to someone who was protesting against the policy of the Federal Reserve banks with reference to par clearance, a copy of which letter is attached to the original bill in this case, marked "Exhibit A," and in which you expressed certain views as to the interpretation of the Federal Reserve Act and the duty of the Federal Reserve Board thereunder. You are familiar with that document?
A. May I see it?
Q. Oh, yes.

(Counsel hands to the witness the document above referred to.)

A. I have written so many letters that I did not know just which one you were speaking of. Yes, sir; I am familiar with that letter.

506 Q. The Federal Reserve Board is an administrative body created under the Federal Reserve Act, and, as I understood you to say on another occasion, you conceived it to be the duty of that board to interpret that act for the purpose of administering the Federal Reserve Board.
A. I think that is clearly the intent of the Federal Reserve Act.
Q. The letter to which I have just referred contains an expres-

ion from you as to the interpretation of that act as regards the check collection system in the United States, does it not?

A. Yes.

Q. According to that letter, you at the time it was written were of the opinion that it would be discretionary with a Federal Reserve bank to receive on deposit for collection and exchange purposes a check payable on presentation that was drawn upon any bank that was neither a member nor a depositor for collection purposes in the Federal Reserve system?

A. In this letter I was discussing the right of the Federal Reserve Bank to receive on deposit from any of its member banks checks and drafts upon whomsoever drawn, provided they are payable upon presentation. I was discussing the right rather than the mandate. I think the inference as to whether or not the act conveys a mandate that non-member checks shall be taken from member banks is left open.

Q. Did you not subsequently conclude that it was mandatory to accept checks on non-member banks when tendered to you for collection by a member bank or a bank entitled to enjoy the privileges of membership?

A. I think both angles were discussed in that letter. I referred to section 13 and to section 16, and considered them together. Section 13 provides:

507 "Any Federal Reserve bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national bank notes, Federal Reserve notes, or checks, and drafts, payable upon presentation, and also, for collection, maturing notes and bills."

Q. That clause that you have just read is confined to member banks, is it not?

A. They may receive from member banks and from the United States. In other words, those are the only two classes that can do business of this kind with the Federal Reserve bank. There is nothing in the act that authorizes the Federal Reserve bank to receive any deposits at all from a non-member bank, except under this amendment to section 13:

"or, solely for the purposes of exchange or of collection, may receive from any non-member bank or trust company deposits of current funds in lawful money, national bank notes, Federal Reserve notes, checks, and drafts payable upon presentation, or maturing notes and bills; Provided, Such non-member banks or trust company maintains with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank."

It is a question, so I am told, as to the legal construction of the word "may," as to whether or not the word "may" has the same effect in that particular place as the word "shall."

It is very certain that that word "may" applies to all of these forms—"any Federal Reserve bank may receive from any of its member banks, and from the United States, deposits of cur-
508 rent funds in lawful money, national bank notes, Federal Reserve notes or checks, and drafts, payable upon presentation."

It follows that unless the bank did receive currency and national bank notes and checks from its member banks, the member banks would be unable to use it.

Q. Would be unable to utilize the machinery of the Federal Reserve system for collection?

A. No.

Q. What would be the difficulty of utilizing the means that they had always used before the Federal Reserve system was established as to checks on non-member banks?

A. I do not think you catch my point there, Mr. Smith. I say that unless the Federal Reserve bank did receive from its member banks deposits of current funds in lawful money, national bank notes, Federal Reserve notes or checks and drafts, payable upon presentation, absolutely the only business that a member bank could do with the Federal Reserve bank would be to discount paper for it. And this refers also to the United States, and the United States does not borrow money from the Federal Reserve bank; yet it is a fiscal agent of the United States. They handle large balances and make large disbursements for the United States, and unless the Federal Reserve banks could receive these checks which come in every three months in payment of income taxes, of what use would they be to the United States? So it is just a question there as to what the meaning of that word "may" is.

Q. You said that a member bank could not do any business except to discount paper, unless you receive checks on non-member banks.

A. I did not say necessarily non-member banks. I was not discussing non-member banks.

Q. Well, that is what I am discussing. I am discussing checks on non-member banks.

A. I said that unless the Federal Reserve bank performed
509 these functions provided here in section 13, unless it received deposits of current funds in lawful money, national bank notes, Federal Reserve notes, or checks, and drafts, payable upon presentation—unless it did those things, what business could a member bank do with the Federal Reserve bank, except to discount paper with it?

Q. Well, section 16 gave you the discretion to inaugurate a clearing-house for the benefit of the member banks, did it not?

A. Yes. "The Federal Reserve Board * * * may at its discretion exercise the functions of a clearing-house for such Federal Reserve banks, or may designate a Federal Reserve bank to exercise such functions, and may also require each such bank to exercise the functions of a clearing-house for its member banks."

Q. What do you understand the functions of a clearing-house to be?

A. To facilitate the exchange of checks. And the clearing-house is not necessarily limited to an exchange of checks drawn upon its members or upon even banks in the city in which the clearing-house is located. For instance, in the city of New York there are members of the clearing-house, and there are a great many banks that are not members of the clearing house, and they effect their clearance through clearing-house members.

Q. Why do they have to effect their clearance through members, if they themselves are not members?

A. Well, I do not know any other way of a non-member bank, a bank that is not a member of a clearing-house, availing itself of the privileges of the clearing-house, unless it joins the clearing-house itself or unless it arranges to clear its checks through some bank that is a member of a clearing-house.

There are fifteen members of the clearing-house here in
510 Washington, and yet I am told that there are thirty-five or forty banks here and all checks drawn on Washington banks are cleared through the clearing-house every day. But the non-members of the clearing-house effect their clearance through some member bank of the clearing-house.

Q. It is necessarily true, is it not, that the privileges of a clearing-house are extended only to the total members?

A. No, not necessarily. They are extended indirectly to non-members.

Q. But it has to be through a member?

A. It has to be through a member. In the city of Boston the Boston clearing-house not only effected the exchange of checks as between its own members, but it effected through its own members the exchange of checks drawn upon local banks in the city of Boston which are not members of the clearing-house and also effected the exchange of checks drawn throughout New England.

Q. Was not that accomplished by the collection bureau, and this bureau given the privilege of membership in the clearing house?

A. I am not altogether clear as to the origin of it. It had its inception, I take it, from what was known as the old Suffolk system in the days when one of the banks in Boston, known as the Suffolk Bank, undertook to act as a redemption agency for a number of banks all over New England in redeeming their bank notes which were in circulation. This idea was taken up many years afterwards, and in the year 1899 or the year 1900—I forget which—the Boston clearing-house undertook the clearance of checks drawn on banks all over New England, the idea being that the country bank in New England,
511 in order to hold its own deposits, wanted to give its customers the same facilities that they would have in the matter of having their checks circulated as though the local customer of the local bank maintained an account in Boston. For instance, a merchant doing business with a bank in Pittsfield, Massachusetts, found that when he sent a check on his Pittsfield bank to New York in pay-

281

ment of a bill the recipient had to pay an exchange charge, and
Boston clearing-house made representations—and I am just
this—I do not know of any particular case, but I am just
the method in which these banks were induced to come into this
ing-house system in Boston—representations would be made to
local bank, say in Pittsfield, that "You are liable to lose some
deposits if you force your customers to carry accounts in Boston.
you will make arrangements with the Boston clearing-house to
checks drawn on you by your local customer cleared through
Boston clearing-house, without charge, on the same basis as
drawn on Boston banks, your customer will be entirely satisfied
carry his balance as heretofore with the local bank in Pittsfield,"
whatever town it happened to be, and that system spread
finally, when the Federal Reserve clearing-system was put in we
that all banks in New England were already remitting at
through the Boston clearing-house, with the exception of a
banks up in Northern Vermont.

Q. Well, did not the Boston clearing-house, which was
of certain banks in Boston that were members of that clearing-
create a country collection department or country clearing-house
the purpose of handling these checks you have been talking

A. I do not recall at the moment what their
512 chinery was, nor do I recall whether they made a
between checks drawn upon the country banks and
items which were drawn upon individuals in these country towns.
do not know just what the arrangement was.

Q. Do you or not know that the country clearing-house
by the clearing-house banks of Boston had a manager in
its affairs, and that this manager had full power to make
ment with the banks in the territory covered, and that he
very much along the same lines as does a depositor in a bank in
ing collection in his institution?

A. It is possible that there may have been a separate
the Boston clearing-house known as the country clearing-house
sion, but the thing was finally cleared through the Boston
house. It may be that these country banks remitted to the
of the collection agency by checks on Boston, and then those
were cleared through the clearing-house.

Q. Was not this country clearing-house represented as a
in the daily exchanges at Boston?

A. I do not know. You will recall also that the Atlanta
had a country clearing-house?

Q. Yes; and so do Kansas City, Nashville, Oklahoma City,
Louis, New York, Richmond, and Detroit, do they not? Do
know about that?

A. In a general way.

Q. When this case was on argument in the Supreme Court a
was filed on behalf of the Federal Reserve Board by Walter S.
general counsel, and William L. Frierson, Solicitor General,
not?

A. Yes.

Q. I desire to read into this record an extract from that brief because it is pertinent to the questions I have just been asking you, in order to refresh your memory.

Counsel state that it would be appropriate and helpful to quote from Mr. Thralls' book the following extracts from the chapter on the country department of clearing-houses, describing in particular the operations of the Boston clearing-house:

"Boston, Massachusetts, was the first center to feel keenly the effects of the expense of handling out-of-town personal checks, and the weight of exchange that was being charged thereon. The Boston banks realized the important part that these checks were playing the business world, and the necessity for their continued use, if they were obliged to seek some means of reducing the burden of expense incurred in their handling. They accordingly created 'Country Collection department' or 'Country Clearing House,' as is generally termed. Kansas City, Mo., Nashville, Tenn., Atlanta, Ga., and Oklahoma City, Okla., rapidly followed the lead of Boston. St. Louis, Mo., New York City, Richmond, Va., Detroit, Mich., and several other cities have organized similar departments. The country clearing-house might best be understood by considering it as a co-operative bank owned by the Clearing House Association and with its functions limited to the collection of out-of-town cash items on a certain territory, and the performance of services incidental thereto, and with its depositors limited to the members of the Clearing House Association.

"The manager in charge is given full power to make arrangements with the banks in the territory covered, and proceeds very much along the same lines as does the officer of a bank in making connections for his institution. Strength, service, and rates are the principal factors in determining as to what bank, or banks, the country clearing-house will send its items on towns where there are two or more banks. A circular letter explaining the plan is sent to each bank in the district by the manager. This letter is followed by a card requesting certain information, including a list of the bank's correspondents, a list of the bank's officers, the time of arrival and departure of mails, the rate of exchange, if any charge is to be made on cash items, and a statement of the financial condition of the institution. These cards are filed for future reference, and in case of doubt as to the validity of the information given thereon, it is checked up and further investigation of the character of the officers and the general character of the institution is made through its correspondents and other sources. When the arrangements have been perfected, each member of the clearing-house is furnished with a book giving a complete list of all banks to which the clearing-house has arranged to send items and the rate of exchange that will be charged by each. Members are informed, from time to time, of all changes in and additions to this list.

* * * * * * *

"The country clearing-house is represented as a member
daily exchanges at the clearing-house, and in that way distri
the returns and secures credit for all returned items, and the
bers charge to the country clearing-house the checks or dra
which have been issued in lieu of items deposited with the
ment for collection. In some country clearing-houses the esti
time required for getting returns is so close to the actual time
the due bills, as they become payable, just about offset the re
and the small debit and credit balances that arise because of
not being an exact offset, are carried over by the bank
515 falls heir to the same until the following day; while in
places the amount due to each member is figured each
and new bills are issued for the exact amount due. The offi
operating expenses of the department are prorated monthly on
basis of the total business and the total number of items han
through the department for the month. The exchange charge
assessed against the members at the close of each month, each
ber being charged with the actual cost of its items. These cha
are taken from the letters as they are paid and are figured
totaled up each day. The plan is, therefore, fair and equitable
all clearing-house members. The country clearing-house does
interfere with the individual arrangements of its members w
their correspondents, but merely gives them the benefits of ad
tional facilities. It is a machine operated strictly for economy a
better service. It materially reduces exchange charges, encour
more prompt returns, and lessens every item of expense incide
to handling of out-of-town checks."

Now, having heard this quotation from an authority on the s
ject quoted by your counsel in this case, please state whether or n
you understand that the country checks of a clearing-house are c
lected through the instrumentality of a collection bureau or co
try clearing-house attachment of the main clearing-house, wh
subsidiary organization operates in the clearing-house exactly l
a member of a clearing-house?

A. Well, I understand from that that the clearing-house ha
of Boston have this subsidiary organization to look after the de
of collecting these country checks; that each clearing-h
516 bank sends to the country clearing-house the checks that
has received from its customers and from the non-mem
banks that deal with it to collect, and when collections are made
settlement is made through the local clearing-house in Bos
That is all I understood there.

Q. Now I direct your attention again to the Federal Reser
system. The members of the clearing-house created by the Fe
eral Reserve Board, under section 16 of this act, are necessari
Federal Reserve banks, are they not, or members of Federal R
serve banks, or non-member banks who have, by making the nec
sary deposit, become entitled to the benefits of the check collecti
system adopted by the Federal Reserve Board?

Well, I have read what the act says about it, and I do not

Well, can anybody else be a member of your check-collection
m except a member bank, a Federal Reserve bank or a non-
ber bank that makes the necessary deposits?
I want to call your attention to one thing here in section 13.
I would be obliged if you would just answer that question.
What I was going to call attention to, I think, has a direct
ing on that question you ask.
All right; if that is the answer.
In other words, I think you want to bring out that this clear-
house that the act authorizes the Federal Reserve Board to es-
h has to be confined exclusively to member banks, and I do
know whether you want to go further and establish the fact
the items that can be cleared must be confined exclusively to
ks on member banks. I presume that is what you want to
bring out?

Q. Yes, sir.

A. In connection with that, I want to call your attention
in to section 13 and to point out that the original draft of the
read this way:

"Any Federal Reserve bank may receive from any of its member
ks, and from the United States, deposits of current funds in law-
money, national bank notes, Federal Reserve notes, or checks
wn on solvent member banks."

By act approved September 7, 1916, that was amended so as to
ke out the words "or checks drawn on solvent member banks,"
d this language was substituted: "or checks and drafts payable
on presentation," indicating, I think, the intent of Congress that
y were not confined to handling checks on member banks, but
e expected to take any kind of a check or draft, provided it was
able on presentation.

Q. Then, prior to that amendment the only checks that could
come into the clearing-house that was organized in that state of
law would have been checks drawn on a member of the clearing-
se, would it not?

A. Well, prior to September 7, 1916, the collection functions of
Federal Reserve banks were very much limited. We did not
ve any elaborate system.

Q. The power to organize a clearing-house was in the original sec-
n 16, was it not?

A. Yes.

Q. Therefore, at the time of this amendment authorizing Federal
serve banks to receive on deposit for collection checks on non-
mber banks you already had authority at least to create the clear-
g-house for the member banks?

A. Yes; and now we have the authority.

518 Q. Had you or not created that clearing-house fu
prior to September 7, 1916?

A. It had been functioning in an imperfect kin
manner.

Q. Why was it imperfect?

A. Because we had not developed it. It was impossible to de
it because the member banks complained very bitterly at
obliged to keep balances with the Federal Reserve banks witho
terest. They complained that the system was of no particular
them. In those days they were not rediscounting heavily; there
an extreme case of money in 1915. They said, "Your clearing-
system is no good to us because you do not take all items." In
words, a clearing-house system to be efficient has to be all-inclu
If you had a local clearing-house in Atlanta or New York that
clear only some items and not clear others, it would be a kind of
handed business which would be unsatisfactory. In view of t
complaints, Congress amended the act so as to extend the checks
might be taken by the Federal Reserve not to solely solvent ba

Q. Then, after that amendment you had to enlarge your org
zation to provide for handling items drawn on banks that were
members of the system?

A. We did. It follows that if a Federal Reserve Bank will
ceive from its member banks checks and drafts it must provide it
with some means of collecting those checks and drafts.

Q. And that was the reason you inaugurated the system of col
ing checks on non-member banks?

A. Yes.

Q. You did that because you conceived it to be to the interes
the members of the system, did you not?

A. We did that because we conceived that to be the intent of
Federal Reserve Act.

519 Q. And, as I understand you now, you claim that that
mandatory?

A. We do some things and do not do other things which m
bers of the system would conceive to be in their interest. We do
try to administer this system just from the standpoint of the inte
of the members of the system.

Q. You do not?

A. We try to administer the system in accordance with the te
of the Federal Reserve Act. A good many members of the sys
think it is very much against their interest to carry balances with
Federal Reserve system without interest, but we do not pay them
terest.

Q. You, then, conceive your present duty to be to receive th
checks and that you have no discretion about it, and that you m
supply means for their collection?

A. I do.

Q. And that is the reason the Federal Reserve Board inaugura
its campaign for universal par clearance in the United States.

Q. Where was that campaign first started?

A. It was started in New England in the Boston district.

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Q. Why did you not inaugurate it all over the United States at time?
A. Because it was not possible to do it.
Q. Why was it not possible to do it?
A. It was a new system and we had to work it out along the lines least resistance.
Q. If the law compelled you to do it, what discretion did you have to where you would first start?
A. I think we had a good deal of discretion.
Q. Then, it was not mandatory, was it?
A. Oh, yes.

Q. How could it be mandatory and you felt that you could evade the mandate in one district and undertake to inaugurate it in another?

A. Simply because we wanted to bring about the result in the st effective manner and in the shortest possible time.
Q. Would it not have been a good deal shorter to put it all over United States at once instead of letting it drag along district by trict?
A. No; it would not have been nearly as short.
Q. Why so?
A. I will explain why. It was inaugurated in Boston first, where we had to do was to take over practically the functions of this untry clearing-house. All banks were remitting and had been accomed to remit in Boston funds at par, with the exception of a banks in northern Vermont, and those banks were visited and responded with, and, finally, one by one they came in until the ston district was able to announce the universal par-clearance sysn in its district. Meanwhile, it was taken up in New York, even fore Boston had completed its program, and they had some oppoion in certain sections of New York, notably in western New York, t finally, all those banks came in. About the same time it was ken up in New York it was taken up in Philadelphia. It was not lapse in any district. We had a voluntary system. Banks were responded with and asked if they would consent to have their mes put on the par list in all the districts, but this intensive camgn, which I presume is the subject of this complaint, is inaugud as a sort of a cleaning-up process. We tried to carry this thing with as little friction as possible to follow the lines of least reance.
Q. Where was your greatest resistance encountered in your clean-up process?

A. In Georgia.

Q. What elements entered into the intensive campaign you have referred to? Of what did the campaign consist?

A. Well, as I recall it, the Federal Reserve banks would notify eir member banks that on and after a certain date they would ceive on deposit all checks and drafts payable on presentation, ether drawn on members or non-members. They advised every nk in the district of that and called the attention of non-member nks to the privileges that were accorded them under section 13

of the act of utilizing these facilities themselves if they desired, stated that they would have their checks which they must col and asked if they would be willing to remit in acceptable fu exchange on certain cities at par. Traveling representatives sent out with cards, in which the matter was explained, and banks were requested to sign up. A number of them signed some did not sign, and in these cases it became necessary for to establish independent collection agencies, or to send a messe out and make presentation of the check over the counter.

Q. What, if anything, did you do in connection with that c paign as to the publication of par lists?

A. The publication of par lists had no direct connection with so-called campaign. The publication of the par lists was for the formation of the member banks and the public.

Q. Whose names did you put on the par lists, all banks in district, or only those that had agreed to remit at par?

A. At first we put the names of only the member banks and th non-member banks which had agreed to remit at par, and then af wards we put on the names of all banks, whether they had agr to remit at par or not.

Q. Did you publish the name of the town or the name
522 the specific bank that was on your par list?

A. I do not recall that. I want to make this statemen that those par lists were not published under the supervision direction of the Federal Reserve Board; they were published by ea individual Reserve bank on its own responsibility.

Q. You knew they were being published by the Federal Reser Board, did you not?

A. We knew they were being published, yes.

Q. Did you object to their publication?

A. Oh, no; we did not object to their publication.

Q. If you had objected they would have been stopped, wou they not?

A. I do not know whether they would or not.

Q. Is not the Federal Reserve Board in absolute control of t policies of the Federal Reserve banks?

A. I would like to call attention to section 4 of the Federal Reser Act.

Q. Is it a part of your answer to that question?

A. Yes.

Q. All right.

A. You asked whether the Federal Reserve Board is in absol control of the policies of the Federal Reserve banks. That is a pret broad question, and I am not prepared to answer that in the affirm tive. I want to call attention to the statutory provisions relating the powers of the Federal Reserve banks themselves. Section 4 o the Federal Reserve Act provides that Federal Reserve banks a empowered—

"To exercise by its board of directors, or duly authorized office or agents, all powers specifically granted by the provisions of this a

and any such incidental powers as shall be necessary to carry on the business of banking within the limitations prescribed by this act.

823 "Every Federal Reserve bank shall be conducted under the supervision and control of a board of directors.

"The board of directors shall perform the duties usually appertaining to the office of directors of banking associations and all such duties as are prescribed by law."

If the national banks, under the general supervision of the Comptroller of the Currency, see fit to abolish a par list, the Comptroller of the Currency has no authority whatever to require that bank to discontinue the publication of the par list.

Our powers over the Federal Reserve banks are somewhat parallel to those of the Comptroller of the Currency over a national bank. If the board of directors of a Federal Reserve bank chooses to adopt certain methods in carrying out the general policies in which only the Federal Reserve Board has a say-so, the particular methods are entirely in the hands of the Federal Reserve bank, and the Board has always taken that view, and the Federal Reserve bank directors are themselves very jealous of that prerogative.

Q. Well, the Federal Reserve Board has the power to suspend or remove any of those directors, has it not?

A. For cause, yes.

Q. Has it ever exercised that power?

A. I recall one case where a director of a Federal Reserve bank was given an opportunity to resign.

Q. Do you remember who that was?

A. I do not care about putting his name in this record. It had nothing to do with par clearance; it was for an entirely separate reason.

824 Q. His position on par clearance was not involved in that controversy?

A. No, sir; it had nothing to do with it.

Q. Well, the Federal Reserve Board has power to require a bank to write off worthless assets, has it not?

A. Yes.

Q. You have the power to suspend its operation for any violation of this act, have you not?

A. For a violation of the act, but I do not see anything in the act about the publication of a par list.

Q. Has not the Federal Reserve Board general supervision over all Federal Reserve banks? Please turn to section 11, sub-paragraph (j).

A. To exercise general supervision over said Federal Reserve banks, but section 4 says that the banks shall be conducted "under the supervision and control," and "control" seems to be a broader term than "supervision." They not only have supervision, but they have control. The Federal Reserve Board has no control, but merely supervision. We have the right to appoint three directors.

Q. A Federal Reserve bank primarily is controlled by its board of directors under your general supervision, and you have the power to remove those directors?

A. Just as a national bank is controlled by its board of directors under the general supervision of the Comptroller of the Currency.

Q. Can the Comptroller of the Currency remove a director of a national bank?

A. Not directly. He can indirectly.

Q. As a matter of fact, the national banks pay a good deal of attention to the instructions of the Comptroller of the Currency, do they not? Has not that been your experience?

A. Some of them do and some of them do not. It depends a good deal on what the instructions are.

Q. Have you ever had a Federal Reserve bank fail to obey
525 the instructions of the Federal Reserve Board since its organization?

A. We have been very careful not to give any instructions that were unreasonable.

Q. Then, it is true that no instruction ever issued by your board has ever been refused?

A. We have never given any instruction that we were not specifically authorized by the act to give.

Q. Therefore, you have had unanimous obedience?

A. We have made suggestions, but we have never given an instruction that we were not authorized specifically by the act to give.

Q. Now, Governor, you recall an opinion of the Attorney General of the United States rendered to the President on March 21, 1918, do you not?

A. Yes, sir.

Q. Do you recall that in that opinion the Attorney General stated that "If the State banks refuse to comply with the conditions by insisting upon making charges against the Federal Reserve banks the result will simply be, so far as the Federal Reserve Act is concerned, that since the Federal Reserve banks cannot pay these charges they cannot clear or collect checks on banks demanding such payment from them"?

A. I also recall a supplemental opinion——

Q. Just a moment. You recall that opinion in that clause, do you not?

A. Yes. I recall an opinion of April 30, 1918, also.

Q. You knew of that statement in the opinion of March 21, 1918, when you wrote to the Attorney General on the 19th day of April following, propounding certain additional questions to him, and he answered that letter on April 30, 1918, did he not?

A. Yes.

Q. Will you please state how that letter of April 30th
526 from the Attorney General addressed to you in any manner modified or affected the statement I have just quoted from his opinion to the President on March 21, 1918?

A. He says in the third paragraph: "I do not understand why checks deposited with a Federal Reserve bank to be cleared or col-

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lected cannot be considered as owned by the bank." Now, if the bank owns a check I think that language referred to has to be considered in the light of everything in the opinion. I do not think the Attorney General meant to say that if a bank had a check it could not collect it, because under your construction of the Attorney General's opinion it is difficult to see how a Federal Reserve bank if it had a check on a non-member bank could collect it in any manner whatsoever even by sending it to the bank on which drawn and accepting payment in such manner as they wished to make.

Q. Well, suppose that is true. Is not the remedy of the Federal Reserve bank perfectly simple by returning that as an item that it cannot handle under the law?

A. Yet he says in the supplemental opinion that he does not understand why checks deposited with a Federal Reserve bank to be cleared or collected cannot be considered as owned by the bank.

Q. What sort of checks was he talking about in that paragraph?

A. All checks cleared or collected through it. He says:

"As a Federal Reserve bank may thus become the owner of all the checks cleared or collected through it, there appears to be no basis in the act for drawing a distinction between checks owned by the Federal Reserve bank and checks deposited with it to be cleared or collected."

327 Q. Do you think it applies to a check drawn on anybody whether he is a member or a non-member or a depositor in the Federal Reserve system?

A. It seems to me that the construction of the Attorney General's opinion is a matter for the courts and the attorneys.

Q. Precisely so, but I want to know on what basis you acted in that connection.

A. I will say that on the receipt of these two opinions from the Attorney General our counsel advised us that the Attorney General was of the opinion that Federal Reserve banks could not pay exchange to any bank for collecting a check. We were never advised by any counsel that this opinion questioned our right to receive from member banks checks and drafts payable on presentation.

Q. Then, right or wrong, you acted on the construction that the letter of April 30th from the Attorney General to you reversed and eliminated the statement in his letter to the President of March 21 that you could not collect or clear checks on banks demanding payment of exchange?

A. No; that was not the point at all. The only point we were in doubt about after counsels' analysis of the first opinion was as to whether there was a difference between a check which had been taken by a Federal Reserve bank in payment of some note that it owned and a check which it had merely taken on deposit or for collection from a member bank, and the Attorney General's opinion of April 30th says there is no distinction between the two.

Q. And that was all the effect that you gave to that letter of April 30th?

A. That was all the effect I gave to that letter of April 30th, which he said that there was no distinction between the checks, matter how they were acquired, by this prohibition of a charg against the Federal Reserve bank.

528 Q. And you have been acting on that construction ev since?

A. We have. I will also state, though, that we always realize that the opinion of the Attorney General was not binding; it was merely an expression of opinion by the highest executive law offic of the Government subject to revision of the courts. The opinion of the Attorney General, as we understand it, does not amend the act.

Q. Then, you differed with the Attorney General as to the para graph just quoted by me?

A. No; I never differed with the Attorney General at all. The opinion went to counsel and counsel advised us that the only point that was not clear was the question as to whether there was any difference between checks growing out of the manner in which they were acquired, and then that letter was written to the Attorney General, and his reply of April 30th seemed to settle that satisfactorily and we proceeded.

Q. Then, as a matter of fact, all Federal Reserve banks in the United States with the approval and consent of the Federal Reserve Board do accept for clearance and collection checks on banks that have not agreed to remit at par, but, on the other hand, have refused to remit at par? Is not that true?

A. No; it is not true because there are quite a number of banks that are no longer on our par lists.

Q. Do you decline to accept checks on them?

A. We do. That is, the banks do; the board does not.

Q. The banks decline to accept checks on any bank whose name is not on the par list?

A. And they handle those matters without any reference to the Federal Reserve Board whatever. Those are matters in their jurisdiction. There are banks parties to this suit and Federal Reserve banks are not handling those checks. There are banks in

529 North Carolina that have issued injunctions and we are not handling those checks. And there are various cases where, owing to legal proceedings, we do not undertake to handle the checks.

Q. Then, as I understand you, you say, in the first place, that it is mandatory on you to receive and collect all checks wherever drawn when deposited by a member bank? That is your first position, is it not?

A. That is our construction of the law, yes.

Q. Then, you do decline to receive checks drawn on banks that are not on your par list?

A. You know very well the reason why.

Q. Well, I am not asking why.

A. We decline to do it on account of injunction.

Q. And that is the only reason?

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A. As far as I am advised, that is the only reason. There may be other reasons in specific cases, good and sufficient reasons, why a Federal Reserve bank itself, on account of the credit risk involved, might not want to do it, but I do not know anything about that. We have no jurisdiction over that.

Q. Now, Governor, when you and the board were considering this general question of universal par clearance did you not conclude that it was your duty to so construe those acts as to give the member banks as much benefit as possible out of them and not permit non-member banks to obtain the benefit of this check-clearing system that you have?

A. Not at all. We were anxious for the public to get the benefit, and the public deals with non-member banks as well as member banks. We wanted them all to get the benefit of it, and at our suggestion this amendment to section 13 was passed distinctly
630 authorizing non-member banks which for any reason would not, or could not, join the Federal Reserve system to receive at the same time full benefits of the collection system that the member banks do.

Q. Permit me to call your attention to a statement you made on May 5, 1920, before a committee of bankers in the Federal Reserve Board room, stenographically reported by your own stenographer, from which I read as follows:

"Gov. Harding: Section 16 of the act provides that we 'shall' take at par from the member banks their checks, while section 13 says that we 'may' take checks payable on presentation regardless of whether they are drawn on member or non-member banks. You"—

By "you" you mean me, as I was in that conference—

seem to think it is the board's duty to let the non-member banks, which contribute nothing to the Federal Reserve banks—and some of them are obliged to stay out because they haven't sufficient capital to allow them to come in—you would not expect the Federal Reserve Board to amend this act so as to make it to the advantage of every member bank to get out of the system. Now, if we cannot give them any facilities except as against one another, and from the very class that they are the most anxious to collect from, we cannot handle for them at all. One after another the banks will get out and become State banks."

Do you remember that statement?

A. Yes.

Q. That is your opinion now, is it not?

A. In my opinion now this whole controversy is because the banks do not want to give up a source of profit that they have had.

631 Q. Do you think that the advantages of membership in the Federal Reserve system are less than the privilege of charging exchange?

A. Under the present circumstances I do not think so, but if conditions were back as they were in 1915 and 1916, I know that a

great many banks who were not discounting at all and never h occasion to use the Federal Reserve bank system were very m tempted. In fact, I know of one or two cases where banks surrender their membership in the Federal Reserve bank system order that they might charge exchange. And what I tell you what I reminded that meeting of was that we had a very gr situation ahead of us which was going to take the entire time of Federal Reserve Board and the banks; that I deprecated this c stant fight that was going on and suggested that the whole ma be tested out in the courts, or that it be referred back to Congres additional legislation. I said I was perfectly willing to write a lette the chairman of the Banking and Currency Committee of House, which I did, asking that Congress do one of two thin either enact some legislation that would make it certain that banks, both State and National, would remit at par, or else m it very plain that all banks, members and non-members alike, mi charge a certain specified exchange charge. And I sent that le which is on record.

Q. The effort of the Federal Reserve Board to deprive the bank charging exchange you felt might endanger the continued membership of some of the banks in the system?

A. If certain banks were permitted indefinitely to get all t benefits of the Federal Reserve system and other banks, which s ported the system, got no more corresponding benefits than th received who were not supporting it and could find th
532 they could make additional profits by withdrawing from t system, I felt it was a question of time only when we wo have a very large withdrawal.

Q. Then, there is a profit in exchange, as you understand it?

A. I think there is a profit in the charges that are made by t country banks, yes.

Q. If you succeed in the campaign for universal par clearan you would deprive those banks of that profit, would you not?

A. They will be deprived of that specific profit. It may be offs in other ways, though. I think their deposits would tend to in crease.

Q. Suppose we differ with you and do not want to yield th profit?

A. You do differ and that is what you are litigating about.

Q. Then, are not the object and purpose of your campaign to co pel them to relinquish that profit by such methods of busines will make that relinquishment the lesser of two evils?

A. No; I deny that. We have no object to affect the profits the banks in this campaign. Our object is to carry out, in a bro way, the terms of the Federal Reserve Act. If it affects their prof that is an incident; but it is not the object or purpose of the cam paign at all.

Q. What jurisdiction has the Federal Reserve Board over a Sta bank?

A. We have no feeling of any kind or description toward a no member bank. We have no feeling against non-member banks at al

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Q. In your statement before the Rules Committee of the House you stated that you considered it a hardship, did you not?

A. Considered what a hardship?

Q. A hardship for a bank to have to pay its checks in currency. Do you recall that?

333 A. I have had so many questions asked me, Mr. Smith, that I do not remember them all.

Q. I call attention to your statement appearing on page 45 of the printed hearings under House Resolution 476;

"The Federal Reserve will appoint a collecting agency to make collection from those who are holding out, but in every case before that is done and a collecting agency appointed there has been correspondence and we have urged them to come in and remit at par, and the option has been given in every case that if the bank did not want to undertake the hardship of carrying cash on hand to meet these checks, to remit at par and they would not have to carry this cash on hand."

A. I did not say I considered it a hardship, but what I meant to say was that the bank itself considered it a hardship.

Q. You do not consider it a hardship, then, for a bank to carry at all times in its vaults sufficient currency to pay all checks drawn by all its depositors?

A. I do not want to answer a question like that. Of course, that would be a hardship. But that was not implied here at all. It was a very different proposition. If a bank has a check presented to it and has the option of paying it either by check or in cash, I do not see where any hardship comes there. He can take his choice and pay it which ever way he wants to pay it.

Q. You say that he has the option of paying it either by check or in cash and he can take the option?

A. Yes, sir.

Q. Are country banks that decline the par-clearance list given the option unless they will sign a remitting agreement?

334 A. The passage that you quoted referred to one particular case. It referred to a particular $30,000 check, and I happen to know all about the particulars of that case. I still say that there was no hardship involved there because the bank did have the option of paying that check on Omaha or New York or Chicago or of paying it in cash, and it preferred to pay it in cash for reasons of its own.

Q. But my question referred to all cases demanding payment in currency, refusing to receive a bank draft. There is a regular course of business by a small bank in a rural community?

A. The Federal Reserve banks advise me that they are receiving a great many checks from country banks in payment of checks presented to them for collection.

Q. When was the practice adopted?

A. It has been in practice more or less all the time.

Q. Can you give a single instance where checks were presented to a non-member bank, a non-par bank, and payment demanded in

currency where the bank asked the privilege of paying those checks in a bank draft and where the collection agent agreed to receive the bank draft without getting the written obligation or agreement thereafter to remit through the mails on all future checks at par?

A. If I had known that question was going to be asked me I could have given you some instances and referred to the Federal Reserve banks.

Q. In the letter that you wrote pursuant to the conference with the bankers on May 5, 1920, the following sentence appears: "The board believes that it is charged with the duty and responsibility of inaugurating a complete check-clearing system throughout the United States." Do you mean by that that this entire campaign for universal par clearance is carried on under the direction of the Federal Reserve Board?

535

A. No.

Q. Then, why did you make that statement?

A. Because it is the truth?

Q. It is the truth?

A. It is the truth. What do you mean by "inaugurated?" Look up the definition of "inaugurated."

Q. It is not mine. You state that it, that is the Federal Reserve Board, is charged with the duty and responsibility of inaugurating a complete check-clearing system throughout the United States.

A. Yes.

Q. Then, the board has been discharging that duty, has it not?

A. We have inaugurated the policy. Now the carrying out of that policy is with the Federal Reserve banks.

Q. But the policy is yours and the execution of it is theirs.

A. The policy is the Federal Reserve Act and the execution of it is exclusively with the Federal Reserve banks in all its details.

Q. In your statement to the bankers on May 5, 1920, you said: "The Federal Reserve bank system is doing a great deal for you that you may not be fully cognizant of. You are getting great benefit from it," and so forth. You remember that statement?

A. Yes.

Q. And that you were anticipating serious trouble in the next few months. Have you any objection to stating what was in your mind then as to the trouble that you anticipated?

A. We were anticipating pretty much the conditions which developed after that.

Q. Would you object to stating generally what those conditions were?

A. A very acute credit situation.

536

Q. What, if anything, did the Federal Reserve Board do about that situation?

Mr. Davis: Is that germane to this?

Mr. Smith: I think it is, sir.

The Witness: To answer that I would have to refer you to the annual report for the year 1920. It is described very fully in ten or fifteen pages of that report.

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By Mr. Smith:

Q. Do you authorize the attachment of a copy of that report to your deposition as an answer to that question?

A. I am willing, yes, sir.

Mr. Randolph: Yes; that is all right.

(A copy of the annual report above referred to is attached hereto, marked "Harding Exhibit No. 1.")

By Mr. Smith:

Q. State whether or not the elevation of the discount rate and the contraction of credits that were then inaugurated were influenced in any respect—not altogether, but in any respect—by the anticipated effect upon the banks that are not members of the Federal Reserve system.

A. I will state, first, that there was no contraction of credit inaugurated, and that the effect on banks not members of the Reserve system was not a factor in the board's policy at all. They were considered as a part of the general situation. I will state further that there was no contraction of credit; there was no reduction of credit in the Federal Reserve system until September, 1920. There was no reduction in notes until the 24th of November, 1920, and from the middle of January, 1920, up to the middle of the year there was an increase in Federal Reserve credits of $400,000,000 and an increase in Federal Reserve notes outstanding of $600,000,000. If the implication is that we started anything with a view of oppressing or hurting or coercing the non-member State banks, I want to say that any such implication or insinuation is absolutely false.

Q. That is all right. I just wanted to get that on the record.

A. And I will call attention to a recent ruling the board has made under the provisions of the act giving us the power. We announced a public ruling that member banks may rediscount eligible notes which they in turn have taken from non-member banks.

Q. Do you know anything about the instructions that are given to the agents sent out to collect checks on non-par banks that refuse to remit at par?

A. I have no knowledge of the present instructions that are given to those agents.

Q. Have you a copy of any such instructions before you?

A. No, sir. I have here a communication we sent to the Senate, which is Senate Document No. 184, in response to a Senate resolution of January 19, 1920, submitting a report as to alleged coercive measures attempting to make State banks submit to rules made by the Federal Reserve Board for any Federal Reserve bank. Upon receipt of that communication from the Senate I sent a telegram to all Federal Reserve banks and asked them to inform me what they were doing about these matters. These telegrams appear in the back part of this communication.

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Q. Then all your information on the subject was obtained fr
those telegrams?

A. Yes, sir.

538 Q. Have you any objection to attaching that documen
a part of your answer?

A. No, sir.

Q. Please identify that document.

A. It is Senate Document No. 184, 66th Congress, 2nd session

(It is stipulated by counsel that either side may refer to the d
ment above referred to in the trial of this case as they see fit and
may be held admissible by the court.)

The Witness: I want to say, though, if I may, that this wa
January, 1920. I do not know whether the methods which
described then still prevail or not. They may have been modi
for all I know.

By Mr. Smith:

Q. So far as all statements contained in that document made
you are concerned of your own knowledge, you now swear that th
are true?

A. They were true at the time the statements were made. I
not know whether they apply to the present situation or not.

Q. Of course, necessarily they will be confined to the time wh
they were made. The Federal Reserve Board issued printed regu
tions on check clearing and collection, did it not, to all Fede
Reserve banks?

A. Yes.

Q. Have you a copy of those regulations as corrected up to dat

(The witness sent for the regulations above referred to.)

Q. I will proceed while those papers are being obtained. Su
pose one of these collection agents goes to a non-par bank and pr
sents one or more checks for payment; suppose for banking re
poses a solvent bank draft for the full amount of the
539 checks is drawn on a correspondent resident in the same ci
with a Federal Reserve bank or one of its branches, it is no
as available for the purpose of cash settlements as the currenc
itself would be?

A. Assuming solvency all along the line, yes. Here are the
regulations about the check clearance.

(The witness produces a copy of the regulations referred to.)

Q. Will you please procure a copy of "Regulation J," precedi
the copy now tendered me that was promulgated in 1920?

(The witness produces a copy of "Regulation J," as requested

Q. Do you know what date in 1920 this present draft of chec
clearing and collection regulations was promulgated?

A. It was promulgated on October 6, 1920.

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Mr. Smith: I wish to have identified the letter of transmission of these regulations contained in the fly-leaf of this pamphlet, and also "Regulation J," for the purpose of attaching them to this deposition.

(The letter, dated October 6, 1920, transmitting the new issue of the regulations of 1917 of the Federal Reserve Board, is attached and made a part of this deposition, marked "Harding Exhibit No. 2"; and a copy of "Regulation J." is attached hereto and made part of this deposition, marked "Harding Exhibit No. 3.")

By Mr. Smith:

Q. What is the usual and ordinary method of collecting checks as between banks when they deal with each other direct and
540 that are not located in the same city or town?

A. A letter is written to the collecting bank enclosing these checks, sending them either for credit or remittance.

Q. As between two such banks located in different cities, is not the sending of checks on each other respectively by special agents or agencies and payment in currency over the counter an unusual and out of the ordinary method of conducting business where there is no question as to the solvency of either bank?

A. It is out of the ordinary. I have known of it being done so frequently that I do not know that I could say that it is unusual, but it is out of the ordinary. I am referring to my experiences as a banker in Alabama before the Federal Reserve system was inaugurated.

Q. What were the conditions?

A. The banks in Atlanta and Birmingham used to very frequently turn checks over to the express company for collection.

Q. What was the reason for that? Do you know?

A. Usually the reason was that the banks in some town had effected a clearing-house agreement and boosted the clearance rate and I could collect them more economically through the express company.

Q. It all sprang out of the controversy over the exchange charges?

A. Yes, sir. I have known of cases where a bank would send a special messenger because it was afraid of the solvency of the bank.

Q. Yes; I understand that perfectly, but where there is no question of solvency the usual and ordinary custom is to send the checks by mail and request remittance or credit?

A. That is true, although I could not say it is altogether unusual for them to be collected in other ways, as there has been so much of it.

541 Q. Do you consider par collection an essential part of the Federal Reserve system?

A. Do you mean that the existence of the system would depend upon it?

Q. Yes, sir.

SE IN CENTER

A. I do not, although there are some that do not agree with
The executives of the Federal Reserve banks, as a rule, take
with me on that statement.

Q. Is it not true, Mr. Harding, that the foundation of the
paign for universal par clearance rests upon the idea that if
presentation of checks for payment in currency by the banks
which drawn, which banks refuse to remit at par, is continued
enough will so disturb the ordinary methods of banking busines
to compel those banks to come into your system rather than
the inconvenience of the methods of collection?

A. No.

Q. That is not your policy?

A. That is not our policy, and I want to go a little bit furth
and say that if it were the idea that presentation of checks by
agent for payment in cash over the counter would ultimately
a dissenting non-member bank into agreeing to remit at par,
my opinion, and the opinion of others well qualified to expres
opinion, that the presentation of such checks by an agent and
acceptance of a solvent check drawn by that bank on some ot
bank, provided there was no exchange charge permitted, would
timately have the same effect. In other words, if a bank in
country town in Georgia had checks presented to it every day
representative of the Federal Reserve bank at Atlanta and cas
them at it, if it is the purpose of the Atlanta bank to induce
such methods the country bank to agree to remit at par, I thi
that purpose could be brought about just as effectively by instru
ing the agent to accept that bank's check on Atlanta by ca
512 because what the country bank is after is the profit on
transaction, and if it does not make the profit, in course
time it will get tired by having this person come around every
presenting this check and having to draw a check. I do not see
distinction between the objects that the Federal Reserve banks
supposed to have in view and why one means is not just as effec
as the other.

Q. Assuming it to be true that certainly up to a very recent
these collection agencies and agents would decline to receive
drafts and did demand the currency, what do you understand
have been the object and purpose of that insistence?

A. I asked a Federal Reserve bank governor that direct questi
as I wanted to post myself on it, and he said he was not able to
an agent in that town that he could trust with the discretion.
said he did not want to send a check to a country bank and ha
that country bank pay his agent by giving his check on anoth
bank located thirty or thirty-five miles away, because they wou
not be any better off and he might be charged with negligence
accepting payment in that way. But he did tell me that if
were permitted to go on with his plan he would give definite instru
tions to collecting agents as to what checks they might receive
payment of checks presented by them to the bank.

Q. Did he do that?

A. He did not have an opportunity to do it. He was stopped by injunction.

Q. Has the Federal Reserve Board resolved upon a policy to nge its plan and give the alternative of accepting bank drafts if h drafts are drawn on certain specified banks?

A. That is a matter for determination by the Federal Reserve bank and not by the Board. The Board cannot undertake the determination of credits so far removed from the country. We inaugurated a general policy. The execution of t policy, as I said, is entirely in the hands of the Federal Reserve nks. They are on the spot. If any credit element enters into transaction they know it, and if they do not deem it safe to e checks they probably demand currency. If they do take ecks they will take such checks as are acceptable.

Q. Do you not know that it has been universal with all the Fedl Reserve banks to accept a bank draft of payee bank when it ces to remit at par, provided that draft is drawn on such a center is satisfactory?

A. That is my understanding, if it is satisfactory exchange, but ere would not be anything in it for a bank having a draft on unswick, Georgia, to accept a check on Valdosta in payment of where you have to collect the Valdosta check.

Q. Suppose it was a draft on Atlanta?

A. That is a different proposition.

Q. As far as all currency is concerned, that would be as available the currency, would it not?

A. Yes, because that is where the Federal Reserve bank is located, d it would go into the clearing-house and it would get its equivat in the long run.

Q. In your annual report, which has been identified and which now a part of the record, you made some figures as to a saving of me one hundred and thirty or one hundred and fifty million dolrs by virtue of the check-collecting system of the Federal Reserve nks.

A. One hundred and thirty-five million dollars.

Q. Will you be good enough to name a single commodity anywhere in the United States the price of which has been reduced by reason of the alleged saving in exchange charges during the year 1920?

A. I can name several commodities the price of which has been duced. I would hate to say, though, that this exchange charge s responsible for it.

Q. Do you know whether that alleged saving in exchange charges s affected the price of a barrel of flour anywhere in the United ates?

A. I do not know.

Q. Or the price of a pair of shoes?

A. It is impossible for me to say.

Q. Well, if that money was saved, who would have received it the system had not been changed, as you indicated?

A. It acts as a convenience for the depositor of the local ba
It enables him to draw on his local bank and have a firm in a
city accept his draft just as though it were drawn on a financ
center, and in some sections has sometimes been the means of
creasing the deposits of the local banks. Instead of having th
people who draw the checks open accounts, they would draw ch
which would circulate. For instance, if a man has a clearance
$500 to make Chicago and he draws a check on his local bank
that is collected through the bank and an exchange charge is ma
then the bank will take it up with the merchant in Chicago w
deposited the check, and the merchant in Chicago will write to
country merchant, "The next time please send me a check wh
is payable in Chicago or payable through a Federal Reserve ba
so I will not have to pay this exchange." In some cases correspo
ence of that sort has been frequent enough to induce the local m
chant either to change his bank account or to open an additio
account somewhere where he can transact his business without bri
ing on all that correspondence.

545 Q. At the time that the check on the local bank was b
presented to this merchant in Chicago he had the option
declining to receive it, had he not?

A. Of course he had, but no merchant making a collection of
country account would care to send back a check for a large amou
and hold the whole account in abeyance merely because of an ex
change account of a dollar or two. He would rather collect th
check and talk about the exchange charge afterwards.

Q. You are speaking about a transaction between a depositor
a country bank and a merchant in Chicago?

A. Yes.

Q. And I assume you are referring to a transaction whereby th
countryman who had this deposit in a country bank bought a bi
of goods from a merchant in Chicago amounting to $500 and h
wanted to pay for it and he gave his local check to the merchan
in Chicago.

A. And the merchant nine hundred and ninety-nine times ou
of a thousand will take that check and put it in process of collectio
right away, but when it comes back and he has an exchange charg
assessed against him he will write a letter to the local merchant i
Georgia and complain of this charge and make a request that th
next time the remittance be made in a check that will not cost any
thing for collection.

Q. Please describe to me what connection the bank on which th
country check was drawn had with this bill of goods from the mer
chant in Chicago, under ordinary conditions?

A. Well, it is assumed that the country merchant had funds i
the bank against which he was checking and that the bank ha
an obligation to pay the check.

Q. Was it obliged to pay that check in Chicago?

A. No; it was not obligated to pay that check in Chicago;
546 it was obligated to pay that check at its counter, but I under-
stand that if the Federal Reserve bank were to ask for pay-

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nt, that is a hardship; so this country bank has the option of her paying it in funds got at Chicago or paying it in cash.

Q. Whether the service was rendered by the Federal Reserve bank tem for collection or by the country bank in transmitting funds he merchant in Chicago, that was a service to that merchant and the depositor?

A. I do not know that it is a service to the merchant. You know w goods are usually sold. They are payable in funds satisfactory the seller. That is the principle on which our foreign exchanges conducted. When a European buys goods in this country he s to get a dollar in exchange to pay for it. He cannot send his eck on Paris to pay for it. I think it is a matter between the ntry bank and its own local depositor. There is an accommoda- n to the local depositor.

Q. You admit that it was an accommodation to somebody to trans- those funds from the country bank to Chicago?

A. There is either an obligation on the part of the country bank pay that check in cash and look cheerful and pleasant about it, or at country bank, if it wants to sell Chicago exchange, if it can t its customer to pay this exchange, all right; but the matter is tween those two. As far as the selling merchant in the distant y is concerned, he claims that he is entitled to par clearance, and hile I was unable to answer your question specifically a few mo- nts ago as to how far this saving mentioned in my annual report fected the price of goods, I do think that when charges were im- posed on checks every merchant knowing that he was going to get a payment in a country check would probably add on a little to his bill of goods. Of course, we have no way of ving that, but that is the theory.

Q. Assuming for ease of statement that the exchange charge under e rates prevailing would have authorized a charge of one dollar for e payment of the check. Then the country bank was entitled to arge that dollar, if it saw fit, for transporting those funds to Chi- go, was it not?

A. There is a question that comes in there. Let us go back now the payment. We will leave out all this proposition about pre- ntation at the Federal Reserve bank. Suppose a customer himself s an occasion to send, we will say, a thousand dollars to Chicago. e will draw his check on his bank and present it to the cashier and y, "Give me currency for this check, large bills, if you pleasse." f the bank would rather hold on to that currency, the cashier will obably say, "What do you want to do with this?" The customer ill say, "I want to remit it to Chicago. They are all the time after e about exchange on checks, and I thought I would send them oney." Then it would be up to the country banker to say, "Let give you exchange." Then he draws his check and gives exchange nd saves his currency.

Q. Suppose that was not done and the checks should come through nd the bank charged a dollar for it and you come along by your sys- m and you save this dollar by virtue of the universal par-clearance stem, does not either the merchant in Chicago or the man that drew

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the amount out in the country, one or both, get the benefit of the dollar saved?

A. Yes. Now just come back again to the proposition about the payment in cash. Where a bank pays a check over the counter it makes no profit. It has the account and is supposed to make
548 a profit out of its other dealings with its customers. It makes no profit for the customer demands cash, although it may be that in order to keep a supply of cash on hand the bank is put to an expense. The question has been raised as to why a country bank should make a profit if New York or Chicago exchange is demanded. In the old days the answer was, "It costs us money to make New York or Chicago exchange," but under the operations of the Federal Reserve system it does not cost them anything. They can make the exchange and any profit that the bank makes in the transaction is all velvet; it is all net. There is no longer any cost involved in making the exchange. That is all described in this annual report here.

Q. You are speaking now of the benefit to the depositor. Suppose, as a matter of fact, the depositor did not have the money to his credit in the bank when he sent that check to Chicago, but he expected funds to put to his credit at the bank before that check could get back. Then is not the depositor being benefited by the transaction at the expense of the bank that has not even a deposit there at the time the check is drawn against it?

A. That frequently happens.

Q. Is not that one of the principal reasons why local checks are sent in payment of these bills?

A. Is not that a matter between the country bank and its own depositor?

Q. Precisely. Is not the whole matter a question as to whether a country bank would furnish exchange to its depositor?

A. I recollect that I had a customer once who had a habit of coming in and saying, "I have drawn checks on you for a couple of thousand dollars. They are going out West or to New York and when they come in I may be overdrawn. I wish you would telephone me when they come in." His idea was if he could not
549 scare up the cash he would make a note. In other words, he would save a little time on the proposition.

Q. He would save interest on that loan from the time the check was afloat?

A. Yes; and under the rule I have adopted if that thing is carried on too much we request that customer to close his account. We do not care to be used as a convenience in that way. That is referring to my experience as a banker; that is not the Federal Reserve Board.

Q. Do you recall that L. M. Pool was at one time a member of the board of directors of the New Orleans branch of the Atlanta Federal Reserve Bank?

A. Yes; he was a director appointed by the Federal Reserve Board.

Q. Is he now a director in that bank?

A. He is not.

Q. When and under what circumstances did his directorship cease?

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A. He was not reappointed. Directors of branch banks are appointed for a term of one year.

Q. He was appointed by the board?

A. He was appointed by the board and at the end of the year he was not reappointed.

Q. Was there any controversy between him and the Federal Reserve Board as to this par-clearance matter?

A. No; we had no controversy with him at all.

Q. Did his attitude towards that question have anything to do with your failure to reappoint him?

A. His public attitude, yes.

Q. On this subject?

A. He made a speech before the Louisiana Bankers Association in which he said that he would do all he could to render nugatory any regulation of the Federal Reserve Board or order of the Federal Reserve bank in the matter of this check collection business.

550 Q. Was there any correspondence between him and you on this subject?

A. There was.

Q. Have you any objection to producing it?

A. From my standpoint none at all. I do not know how Mr. Pool would feel about it. I simply wrote him two letters. I wrote him a letter and got a letter in reply from him and then I wrote him another letter.

Q. Have you any objection to producing copies of that correspondence for this record?

Mr. Randolph: I do not think those letters have anything to do with it.

The Witness: I have nothing in the world against Mr. Pool and I like him personally very much. He just had an honest difference of opinion, and I think he agrees to the proposition that holding the opinions that he does, and having made a public statement that as a director of that branch bank he was going to do all he could to make nugatory any instructions that he got from the parent bank, he would be in an inconsistent position if retained, so when his term expired we did not reappoint him.

Q. Mr. Pool is the president of the Marine Bank of New Orleans, is he not?

A. He is.

Q. May I have your assurance that if that correspondence is made public it would not affect the conduct of the Federal Reserve Board or the conduct of the Federal Reserve bank towards the members of the system?

A. I want to say that that episode has never affected in the slightest degree the transactions between the Federal Reserve bank and that particular bank, and I will say that if you get Mr. Pool's consent for that correspondence to go in the record. I will give it to

551 you for the record; but I do not want to put it in the record without knowing it to be agreeable to him.

SE IN CENTER

Q. I have a letter from him which I would be very glad to sho you, stating that his only objection was that he feared it migh prejudice his bank in its dealings with the Federal Reserve Bank o Atlanta, the New Orleans branch.

A. I do not see where he could possibly have any fears of that so because he is the best judge as to whether his dealings have bee prejudiced. If the episode itself did not prejudice his bank I do not see how the publication of the correspondence will prejudice it and I will give you assurance that it will not prejudice him.

Q. In view of his letter on the subject, are you willing to publish it?

A. Have you got his letter there?

Q. Yes, sir.

A. You understand, of course, that when you asked some time ago if we had ever removed a director I did not have Mr. Pool in mind. He was not removed; he was simply not reappointed when his term expired.

Q. I would be very glad, sir, if you would read that letter into the record.

(Counsel hands a letter to the witness.)

You will note there that his only hesitation in sending me a copy of it was that he feared it might bring about reprisals from the Federal Reserve bank because of his large indebtedness to the Federal Reserve Bank at Atlanta. You note that, do you not?

A. That indebtedness, though, has been created since this episode happened.

Q. In the light of that letter from Mr. Pool, stating that that is his only objection, have you any objection to producing the entire correspondence?

A. None whatever.

552 Q. Will you kindly produce the letters referred to by Mr. Pool and attach them to your answers?

A. Yes; I will have them here in a minute.

(The letter from Mr. Pool, addressed to Mr. Alex. W. Smith, dated July 15, 1921, above referred to, and the correspondence between Governor Harding and Mr. Pool above referred to, are copied in full into the record, as follows:)

Harding Exhibit.

Marine Bank and Trust Company.

New Orleans, July 15, 1921.

Mr. Alex. W. Smith, Special Counsel, 1111 Hurley Wright Building, Washington, D. C.

My Dear Mr. Smith: Your letter of the 13th instant has been received.

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I have the Harding letter in my possession, and am more than anxious to have it used, but, in common with practically all of the banks here, the institution with which I am connected owes the Federal Reserve bank a considerable sum of money, and, in dealing with a man of Harding's caliber, I naturally expect reprisals. It is, therefore, very important for me to know just how much weight he has with the present Federal Reserve Board.

So that you may understand the situation, I am a member of the Executive Council of Louisiana Bankers' Association, and a meeting was called here, some time ago, to protest against the methods used by the Federal Reserve bank to enforce par collections. It was brought out at this meeting that some of the Federal Reserve
553 banks were accumulating checks on the small country banks and presenting them in large blocks, with the evident purpose of embarrassing the banks.

This, and other actions of a similar nature, were the subject of unanimous denunciation on the part of all the bankers present, and after the arguments had been going on for considerable time, in order to bring the matter to a head, I proposed a resolution condemning the action of the Board and its methods of enforcing the collection of checks at par.

The proceedings were printed, and a copy of them was obtained by the Federal Reserve Board, resulting in a letter from Mr. Harding to me on the subject, which has been referred to.

As a matter of fact, in proposing the resolution, I was actuated more by a desire to bring the matters under discussion to a focus than anything else. There was no question about the resolution being passed, and it would have been passed no matter who presented it, as the opinion was absolutely unanimous.

Please consider this information confidential. Very truly yours (Signed) G. M. Pool, President.

554 Copy.

Marine Bank and Trust Company.

New Orleans, December 2, 1919.

Mr. W. P. G. Harding, Governor Federal Reserve Board, Washington, D. C.

DEAR SIR: Your letter of the 28th ultimo has been received and its contents very carefully noted.

I have been a member of the Louisiana Bankers' Association almost since its organization, was its treasurer for many years, its president for one term, and am now a member of its Executive Committee.

Naturally, I attended the special meeting which was called here to consider the matter of exchange charges. After almost all the members present had expressed their views, and it was evident that the sentiment was unanimous on the subject of the Federal Reserve Board's dictum as to exchange charges, in order to put the Associa-

SE IN CENTER

tion on record, more than anything else, and to save time, I offer
the resolution in question.

My attitude concerning the subject under discussion was thor
oughly well known, I am convinced, to all of the members of the
board of directors of the Federal Reserve Bank of Atlanta, and cer
tainly it was known to you personally, for you will, undoubtedly
recall that, in company with several Louisiana bankers, I met you in
the St. Charles Hotel, about two years ago, and we discussed this
matter. I have not changed my mind in the slightest degree since.

As between a membership on the Board of the Local Branch of
the Federal Reserve bank and the forfeiture on my part of
555 the right to think, speak and act as my mind and conscience
might dictate, there can be but one decision. So that, if your
board wishes to take the opportunity of appointing some one else in
my stead for the year 1920, it will be perfectly agreeable to me.
Very truly yours (Signed) L. M. Pool.

Personal.

November 28, 1919.

DEAR SIR: The attention of the Board has been called to a resolu
tion said to have been offered by you, which was adopted at a special
meeting recently held of the Louisiana Bankers Association, as fol
lows:

"Resolved, That it is the sense of this meeting that the action of
the Federal Reserve banks, in attempting to arbitrarily enforce the
parring of items, thus forcing the banks to render services gratis, is
unwarranted, and highly objectionable to us; and resolved further,
That, if this course is persisted in, we agree to use every effort to
prevent its consummation."

The Federal Reserve banks are required under sections 13 and 16
of the Federal Reserve Act to receive from member banks at par
deposits of current funds in lawful money, national bank notes,
Federal Reserve notes, or checks and drafts, payable upon presen
tation, and also, for collection, maturing notes and bills. There is a
proviso to this section which allows members and non-member banks
to make reasonable charges "to be determined and regulated by the
Federal Reserve Board but in no case to exceed 10 cents per
556 $100 or fraction thereof, based on the total of checks and drafts
presented at any one time, for collection or payment of checks
and drafts and remission therefor by exchange or otherwise; but no
such charges shall be made against the Federal Reserve Banks."
The Attorney General of the United States has construed this as
meaning that a Federal Reserve bank cannot legally pay any fee
to any member or non-member bank for the collection and remit
tance of a check. It follows therefore that if the Federal Reserve
banks are to give the service required of them under the provisions
of section 13 they must in cases where banks refuse to remit for their
checks at par use some other means of collection no matter how
expensive.

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The action of the various Federal Reserve banks in extending their par lists has met with the approval of the Federal Reserve Board, which holds the view that unless the law should be amended by Congress the Federal Reserve banks must use every effort to collect all bank checks received from member banks, at par.

The Board recognizes, of course, your right as president of a member bank and as an individual to express any views which you may have on this subject and also to take such steps as you may deem proper to put your views into effect, but the Federal Reserve Bank of Atlanta is preparing to extend its par list and you are a director of the branch of that bank at New Orleans, consequently public expressions of views such as have been ascribed to you are very embarrassing and the Board feels obliged to say that as long as you remain a director of the branch bank at New Orleans it will expect that you do nothing to obstruct a policy for which the Board, and not you, is responsible. Several of the Federal Reserve banks are now able to collect on all points in their respective districts
557 at par, and it is inconceivable that the par system should prevail in all sections of the country except the Gulf States. It is the Board's duty to see that the law is administered fairly and without discrimination and that it applies to all sections alike.

The Board was pleased several months ago to have an opportunity of appointing you a director of the branch bank at New Orleans. As you know, branch bank directors are appointed at the end of each calendar year, and while the Board would like very much to reappoint you for the year 1920, it is only fair that you should understand that it cannot reappoint you unless you are willing to work in co-operation with it in carrying out the law as construed by the highest legal authority of the Government and unless you will express a willingness at least to refrain from taking any action or expressing any views subversive of the Board's policy.

An early reply to this letter is requested. Very truly yours. (Signed) W. P. G. Harding, Governor.

Mr. L. M. Pool, Marine Bank and Trust Company, New Orleans, La.

Dear Sir: Receipt is acknowledged of your letter of the 2d instant, which has been brought to the attention of the Federal Reserve Board.

It is true, as you say, that the opinions you entertained two years ago on the subject of the par collection of checks were known to me and through me to the other members of the Board, and when the Board was considering your appointment as a director of the
558 branch of the Federal Reserve bank at New Orleans, the question was raised as to whether the views you entertained at that time, if still held by you, might not operate to prevent your acceptance, but the thought was that regardless of your personal opinions you would, after you had qualified as a director, refrain from speaking or acting in contravention of a policy which, in the opinion of the Board, is necessary to carry out the plain provisions of the Federal Reserve Act.

You say that "as between a membership on the board of the local branch of the Federal Reserve Bank and the forfeiture on my part of the right to think, speak, and act as my mind and conscience might dictate, there can be but one decision. So that, if your Board wishes to take the opportunity of appointing some one else in my stead for the year 1920, it will be perfectly agreeable to me." In your oath of office as a director of the Branch Bank you subscribed to the following: "I will not knowingly violate or willingly permit to be violated, any of provisions of law prescribing or in any way affecting the duties of my office." Yet in the final clause of the resolution introduced by you at the meeting of the Louisiana Bankers Association you obligated yourself with reference to the Board's action "to use every effort to prevent its consummation."

The Board in its letter of November 28th called your attention to the provisions of the law with reference to the collection of checks and to the interpretation of some of these provisions by the highest legal authority of the administrative department, the Attorney General of the United States. The board expressly wishes to disabuse your mind of the idea that there is any intention or desire on its part to control the thoughts or conscience of any one, but when a director's thoughts are translated into words or actions in-
559 consistent with the obligations of his office, the board cannot do otherwise than to call his attention to such inconsistency. The Federal Reserve Bank of Atlanta, will, shortly after January 1st, undertake to carry out the provisions of the law, and in order that you may feel entirely free to speak and act as your mind and conscience may dictate, the board will not embarrass you by asking you again to subscribe to the director's oath. Very truly yours, (Signed) W. P. G. Harding, Governor. Mr. L. M. Pool, Marine Bank and Trust Company, New Orleans, La.

By Mr. Smith:

Q. What do you understand by the word "float" in connection with the collection of bank items?

A. Items in transit in mail sacks, the sum total of the items in transit.

Q. Prior to the collection system of the Federal Reserve banks, how was the "float" carried and who carried it?

A. The change in the method of carrying "float" was not brought about by any ruling of the Federal Reserve Board, but it is statutory and was brought about by the operation of the Federal Reserve Act itself.

Q. Can you outline those changes? I mean in banking parlance, not in the language of the act.

A. Before the Federal Reserve system was established the national bank in Atlanta, for instance—Atlanta was at that time rated as a country-bank city and not a Reserve city—was required to carry a reserve against its net deposits of 15 per cent, of
560 which two-fifths had to be gold or lawful money in the national bank's own vault and three-fifths had to be a balance

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ue from and approved by a Reserve agent in either a Reserve or
ntral Reserve city. Under the law the national bank in Atlanta
uld on the day it received such items bundle up all the items that
had received over a large territory, practically all the West or
e Central West, enclose them in a letter to a correspondent bank
St. Louis or Chicago or Cincinnati, charge that correspondent
nk on its books with the amount of those checks and by that
ookkeeping entry all of those checks, which might be on fifty or
xty different points, would become immediately available as part
the Atlanta bank's reserve, because they would appear on its
ooks as due from an approved reserve agent; and the bank that
eceived those items would carry such part of that "float" thus
reated in cases where it made direct collection; or, if it in turn
ould send such items to one of its own approved reserve agents, it
ould pass the "float" onto that bank. Consequently the "float,"
ems in transit, were passed about from one bank to the other, and
ey appeared on bank statements as a reserve, but not a solid tan-
ible reserve. It was an expected rather than an actual reserve.

Q. Now, will you go right on and state the present arrangement?

A. We will save a lot of time if we merely refer to section 19 of
he Federal Reserve Act, which prescribes the reserve requirements
or member banks. That applies to national banks and State banks
like. Under that law all banks are required to carry a reserve of
3 per cent against their time deposits, and against their net de-
mand deposits they carry a reserve of 7 per cent, 10 per cent or 13
per cent, according to the classification of the town or city
561 in which they are located, the central reserve city having
13 per cent reserve, the reserve cities 10 per cent and the
country banks 7 per cent. But the 3 per cent reserve against time
deposits is applicable to all banks. Member banks are no longer
required to carry any specified amount of cash in their vaults, that
being a matter entirely for the discretion of the officers. All legal
reserves of member banks must be carried under the provisions of
section 19 of the Federal Reserve Act in the form of an actually
collected balance with the Federal Reserve banks. In other words,
e "float" now stands on its own bottom and is carried as a kind of
suspense account until it is actually collected.

Q. What charges, if any, are made by member banks as a con-
dition to immediate credit on collection items by reason of the
"float"?

A. According to my best recollection, immediate credit is not
given.

Q. Well, if it is requested will it be given in consideration of a
charge?

A. I do not see how the bank could do that under the law.

Q. Suppose a merchant in New York city presents a check, an
out-of-town check, to its bank in New York for deposit and wants
immediate credit for it. Does he make any charge for it?

A. I do not know. A great many member banks, I think, may
charge a small amount.

Q. You are not familiar with that subject?

SE IN CENTER

A. No; I do not know what the member banks charge their cu
tomers.

Q. Do you not know that the clearing-houses in all the la
cities in the United States put lists of charges for immediate cre
on items that go into the "float," measured by the time it takes
get the proceeds on that check?

A. That is not what you asked me the first time.

562 Q. What charges, if any, are made by member banks
a condition to immediate credit on collection items by re
son of the "float" was the question.

A. You did not ask anything about clearing-house rules. I a
familiar with the New York clearing-house rules.

Q. The member banks are members of the New York clearing
house.

A. I know in some cities they do impose a charge based upo
the time these items will be in transit, which is looked upon a
an interest charge, because they give the customer immediate credi
and they do not get corresponding credit from the Federal Reser
bank until the item has actually had time to be collected.

Q. You call that a deferred credit, do you not?

A. That is a deferred credit, yes.

Q. Do not the Federal Reserve banks have a regular schedule o
days to elapse before actual credit will be given on items that pas
into the "float"?

A. Yes; they have a schedule which is worked out on actual ex
perience.

Q. While that time is lapsing the amounts represented by thes
checks in the "float" is not available to the balances of the membe
bank in the Federal Reserve bank, are they?

A. No; they are not available to anybody except to the differen
banks on which the checks are drawn. They still have the benefi
of the deposit until the checks come in.

Q. You have sent for a statement, a letter, that shows the amoun
of the "float" for the year 1920 for the Federal Reserve system?

A. There is not any such thing as a "float" for the year 1920
We can add up the daily "float," but that would not mean anything
At the close of business on July 20, 1921, for instance, we show here
that as resources the Federal Reserve banks had uncollected

563 items, all twelve combined, $544,655,000. As an offset on
the other side, liabilities, they had deferred availability items
$453,543,000. So there is a difference of about $89,000,000 which
represents the actual "float" that the Federal Reserve banks are carry
ing, and that is represented between the difference in the actual
working out of these items in transit and the actual returns received
Theoretically, these two items ought to balance, but, for instance, we
will say it ought to take two days to collect a check on this point and
maybe the banks are a day late in remitting; so that throws it out of
gear. Instead of carrying the whole amount of "float" shown by this
item of uncollected items, the Federal Reserve banks are only carry
ing that amount less the offset of deferred availability items on the
other side, $453,543,000.

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Q. You have a regular time schedule?

A. You see that comes in this way: If the system operated perfectly, if every railroad train were on time, if every bank actually made its remittance to the Federal Reserve bank on the day the check was received, then the amount of uncollected items shown in this statement here would be exactly equal to the amount of deferred availability items shown on the liability side. But it is impossible, without imposing too heavy a penalty, without leaning backward in the matter of these time allowances, to protect the Federal Reserve bank fully; consequently our statements always show an excess of uncollected items over the offset of deferred availability items, that excess representing the net result between the actual operation and the theory.

Q. What charge, if any, is made by the banks beyond your schedule?

A. No charge.

Q. Is the amount scheduled to return on a given day but which does not get to destination on a given day in a Reserve bank placed to the Reserve account of the depositing bank, or do you wait until you get the actual proceeds? In other words, do you credit to the Reserve account according to your schedule or according to the actual receipts?

A. Those are matters of routine operation that the officers of the Federal Reserve bank can answer better than I can. I can only answer as to the theory of it.

Q. Have you any idea as to the average number of days these items are afloat in the United States?

A. It varies according to the——

Q. I understand its varies, but what would you say was the average?

A. I think I can give you a complete chart showing the time allowances as between every Federal Reserve bank and branch bank city in the United States as against all other places.

Q. The Federal Reserve system is connected with itself and with the Federal Reserve Board by its own private wires, is it not, Governor?

A. Leased wires, yes.

Q. You use your own operators?

A. Yes.

Q. Does that apply to telephones also?

A. Not generally as to telephones. We have a telephone line between Washington, Philadelphia, Boston and New York.

Q. Have you a private telephone line to Atlanta?

A. I do not think so.

Q. You have a leased wire to Atlanta?

A. We have a leased wire to Atlanta.

Q. And then the interchangeable system of leased wires all over the system?

A. Yes.

Q. Through the means of these private telegraphic instruments

SE IN CENTER

of communication the entire system is in constant daily
565 touch as necessity requires?

A. Reference is made to all that in the annual report. It is described in full.

Q. That is a fact, is it not?

A. Yes; it is a fact. That is, a leased wire extends to all cities which have a Federal Reserve bank or a branch of a Federal Reserve bank, with one exception. We have a branch in Helena, Montana, and we have no leased wire there. And I do not think we have a leased wire between Oklahoma and Kansas City. We use a commercial wire between those two points. But with that exception we have the whole thing tied up.

Q. Prior to the original determination of the policy of the system as to universal par clearance, what, if any, conferences were held on the subject?

A. The Governors of the Federal Reserve banks had very frequent conferences in the early days of the system. They would meet sometimes in Washington and sometimes in other cities. Since August, 1916, their conferences have all been held in Washington. At all of these conferences various routine matters affecting the operation of the Federal Reserve banks are discussed. I know that there was a good deal of time devoted at these conferences to the discussion of the collection matter from the very beginning, although no conference was ever called that I know of to consider the collection matter alone. It all came up in connection with a number of other topics to be considered.

Q. The Federal Reserve Board, or its representatives, sit in at those conferences, do they not, when held here?

A. The Federal Reserve Board opens the conferences. We sit in with them usually for a half hour or so just to exchange greet-
ings and to lay before them any matter that we may wish
566 to have considered. Then we leave them and before the conference adjourns we go over again and sit with them for about half an hour, but their conferences are held under their own supervision; they have their own presiding officer, and the Federal Reserve Board does not sit with them throughout the conferences continuously.

Q. You are not familiar with the results of those conferences after they are concluded?

A. Yes; we get a report of their recommendations and what they have agreed to do in matters pertaining to their operations. If they desire any rulings from the Federal Reserve Board on any matters they say so and we give such matters consideration.

Q. Was it at these conferences that it was decided to put into effect this par clearance system in sections beginning with Boston, then with New York, then with Philadelphia, and so on around the circuit?

A. I am not clear as to that. I will have to look up the records.

Q. Have you a record of the conferences on that subject?

A. No. At these conferences they would simply say what they had done in their case. I recollect at one of the conferences in New

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ork or in Boston they reported what they were doing, and other stricts would say, "We have not done much yet," etc. I think ere was one conference held with the transit managers of the dif-ent banks to work out this time schedule.

Q. How long did the regulation set forth in paragraph 10 of Regulation J," revised in 1917, continue in effect? That section ovided that "the cost of collecting and clearing checks must cessarily be borne by the banks receiving the benefits and in oportion to the service rendered."

A. That was modified at the request of the Federal Reserve banks, I think, some time in the year 1918. They asked the Board for authority to do away with the service charges. We maintained for a while a service charge.

Q. Why was that done?

A. The service charge was to cover——

Q. I mean why was the practice of making it abandoned?

A. Simply because the earnings of the banks increased to such point that they could very well afford to stand that service charge. was an accommodation to the member banks who were carrying serves with it without interest, and we felt that it was an accom-odation that ought to be accorded them and be passed on by em to the public. The service charge originated at the time e earnings of the Federal Reserve banks were very small, and the ansit department of a Federal bank employs a great many people. is one of the largest departments of the bank, and the service harge of so much per item was put on in order to cover the cost operation. But when it no longer became necessary to provide r that cost of operation we took off the service charge, and I think e regulations of 1920 left it out.

Q. Your first draft of Regulation J was made in 1916, was it ot? Notice the date there.

A. No; I guess 1915 was the first.

Q. Then it was revised in 1916?

A. Yes.

Q. Then it was revised in 1917 and that is the revision now be-ore you?

A. Yes.

Q. Can you give me the date in 1917 when that revision was ade effective?

A. June 22, 1917, but this section 10 here was abrogated by spe-al ruling of the board first at one bank and then another until it as made universal.

Q. That was in 1918?

A. Yes.

Q. After the earnings had enabled you to shrink that charge?

A. Yes. You will remember that it was not until the 30th of June, 1918, that all Federal Reserve banks had caught up on their dividend payments.

Q. Speaking of the banking business generally, so long as a sol-vent bank remains open for business and is operating under regu-

SE IN CENTER

lations and provisions of the governmental authorities having jurisdiction over it, has it not the right to rely upon the funds deposited with it being drawn out only in the regular course of business through the usual and customary channels?

A. I cannot answer that question.

Q. You do not know?

A. I think a banker had better not do too much guessing.

Q. Has not the experience of bankers developed a scale of averages upon which bankers can rely as to the amounts to be provided to meet drafts upon their deposits and the media through which such draft shall be paid, whether in cash or exchange; and is it not true that these averages are relied upon when the amount of reserve is fixed.

A. That is another difficult question to answer.

Q. Well, upon what theory is the amount of reserve regulated?

A. The reserves of the national banks were fixed in 1863, 1864 and 1874 by various amendments. I was not here then and I do not know what the theory was. When the Federal Reserve system was enacted a totally different theory of reserves was adopted. To show you the essential difference, the national-bank law requires a specific reserve in gold or lawful money to be carried in the vaults of each individual bank. The Federal Reserve system does not require any vault reserve at all. It provides that reserves
569 may be replenished by rediscounting. It is a totally different proposition.

Q. What is the reason for any limit of reserve to be established?

A. In some countries there is no reserve requirement. I do not believe there is a reserve requirement in England.

Q. I am speaking now of the United States and its banking system, both State and National. What is the underlying principle upon which reserves are required at all?

A. I would not care to undertake to answer that question.

Q. Do you mean you do not know, or that you are not willing to answer it?

A. I do not know what the framers of the Federal Reserve Act had in mind when they put in the Federal Reserve requirements.

Q. I am not speaking of the Federal Reserve Act; I am speaking of banking. You are a banker of many years' experience, are you not?

A. Yes; I have had some experience in banking.

Q. When you were a banker did you keep an amount of actual currency in your bank equal to the total amount of your deposits at all times?

A. No.

Q. Could you have successfully conducted a bank on that principle?

A. No.

Q. Could any bank safely lend out its money received on deposit on that theory of banking?

A. Banking would not be profitable if banks kept in cash the amounts of their deposits.

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Q. Then, is not the amount of currency that conservative banking quires that you should keep on hand regulated by the average fts made upon the deposits of that bank?

A. Now you are getting down to where I can answer it.

70 Yes; a bank will carry an amount of currency on hand which it has learned from experience is sufficient to meet ordinary quirements.

Q. Could a bank conduct a profitable business upon any other eory?

A. But a bank does not carry a uniform amount all the time be- se they have seasonal demands and in some cases demands greater some days in the month than on other days in the month, and ey always prepare in advance for these demands that they antici- te.

Q. Yes; they have to look forward to the possible demands.

A. Yes.

Q. And they are guided in that by their own experience?

A. And some banks ask their depositors that draw good-sized ecks on them to let them know just what checks they have drawn. know of one large bank in Boston that used to require a list of ery check drawn of over a thousand dollars. A good many banks ake a practice of asking their customers to advise them of large ecks that they have drawn on them.

Q. In the absence of any specific explanation, the bank has to ex- rcise its best judgment?

A. Yes.

Q. But it is true that only a certain percentage of total deposits is ually carried in currency in a bank?

A. Certainly.

Q. When one of the Federal Reserve banks places all the banks in given section, either the city or Federal Reserve district, on its par st, what is the effect as to the number of checks drawn on the banks that district converging in the Federal Reserve corporation as com- ared with the number of checks drawn on those same banks before ey were placed on the par list?

A. The effect is that these checks from various sources

71 would have a tendency to converge at the Federal Reserve bank.

Q. Is that because it undertakes to collect them at par?

A. Possibly so. I do not know that it would be exclusively the ason because a great many banks like to concentrate their checks ith large banks, anyhow. The publication of the country bank's ame on the par list either of the Federal Reserve bank or on the ar list of any big city bank would naturally have a tendency to at- act the sending of such checks to the bank getting out this par list, nd it would mean that instead of these checks coming to the local ank through various channels they would more and more come hrough the concentrated channels; but there would be this offsetting ifference, there would be a difference of from one to two days in the verage time where these checks would be presented to the local bank

SE IN CENTER

by this indirect sending. A direct sending would call for an ea payment than an indirect sending.

Q. From that I infer that you understand that direct collec between banks reduces the time of the float?

A. Yes.

Q. And the indirect sending around through Federal Re banks and through branches increases the time of float?

A. I can give you an example. If a merchant in Chicago ha check for a thousand dollars on a bank in Millen, Georgia, we say, if he wanted to save time, the quickest way he could collect check, if he took it in at this day, would be to write a letter to bank at Millen, Georgia, and send them that check and say, "Pl send me New York or Chicago exchange for this check." But do not do that. What is done is this: The merchant

572 take that check and deposit it with his bank in Chicago. will say he has deposited that just before three o'clock. T that check is written up this afternoon and sent the first thing morrow morning to the Federal Reserve Bank of Chicago, and Federal Reserve Bank of Chicago some time tomorrow will wri letter to the Federal Reserve Bank of Atlanta and send the Atl bank that check, and then the Federal Reserve Bank at Atlanta proceed to collect it by whatever means it has available. So you there is a delay of probably two days in that transaction.

Q. You were engaged for a number of years in the banking ness in Birmingham, Alabama, I believe?

A. Yes.

Q. While you were engaged in the banking business was it c tomary to publish a par list containing specific names of the ba at which you would accept checks at par, or merely the list of towns upon which you would accept checks at par?

A. I think it was customary to publish the list of the towns.

Q. Only the towns?

A. Yes.

Q. In your letter, Exhibit A to the bill that I have previously ferred to, you express the opinion, "But for the fact that sm country banks are able to have their out-of-town items credited par by some city correspondent, there is no doubt that more of the would avail themselves of the non-member collection privilege th have done so."

The privilege there referred to being the privilege of making th collections through the Federal Reserve par collection system?

A. Yes, sir.

Q. You are still of that opinion?

A. I am. All my banking experience has convinced me that there is any one thing a country banker hates it is to pay e

573 change on any item that he has, and he is usually able t make an arrangement with some city bank correspondent which enables him to clear all his checks at par. They do not gi him the facilities that they have; they merely buy his busines giving him this inducement, and it sometimes affects the rate of in terest that they will pay on his balances. They, of course, try to ge

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n in some other way, but I take it that any country bank in ordiry times can make an arrangement with some bank in a near-by ge town to take his account and to handle at par all the items t he sends them.

Q. Is not the result of that to increase the profits of that country nk on his exchange?

A. It decreases the expense that he would otherwise be put to in ndling his items.

Q. If you are engaged in business and decrease your expense you rease your profits, do you not, in the same volume of business?

A. You do not always increase your profit merely by decreasing ur expense a[illegible]nt. Of course, that would be a step in that direcn, but if your business fell off generally and you decrease your pense accou[illegible], sometimes you might not be able to decrease your pense account as fast as your profits have evaporated.

Q. But if the volume of business remained the same the decrease expense increases the profits.

A. A decrease in expense account would mean an increased profit, es.

Q. Then, this ability to make these advantageous arrangements tween country banks and city correspondents is one of the causes, your mind, that has prevented a greater number of State banks om joining the Federal Reserve system, is it not?

A. I think it has.

74 (Thereupon, at 12.30 o'clock p. m., a recess was taken until 1.30 o'clock p. m.)

After Recess.

At the expiration of the recess the taking of this deposition was sumed, the same parties being present as aforesaid.

By Mr. Smith:

Q. Governor, would not the establishment and universal operation f the par-clearance system of the Federal Reserve banks throughout he United States result in a virtual monopoly of all commercial ollection business through banking channels?

A. It would create no greater monopoly in that respect than lready exists.

Q. Has it not had that effect in districts where it has been put into operation?

A. Monopoly of the commercial-collection business through banking channels?

Q. Yes, sir.

A. The banks have always handled——

Q. I mean monopoly in the Federal Reserve system, in Federal Reserve banks.

A. Oh, in Federal Reserve banks?

Q. Yes.

SE IN CENTER

A. Well, the Federal Reserve banks would only get these i
from the United States Government and from member banks or
member banks which came in under section 13 as clearing mem
The Federal Reserve banks could not go out to the public and
"Send your checks and we will collect them."

Q. Precisely, but I limited my question to clearance thr
banking channels.

A. As a rule, the cheapest and most effective service will ge
business. If they can render the cheapest and most effe
575 service, I presume they will get the business.

Q. Has not the establishment of universal par clearanc
a given district practically had the effect of transferring all collec
of bank cash items through bank channels to the Federal Re
banks and branches in that district?

A. I have not any figures before me to show how much busi
is done by the member and non-member banks as between th
selves.

Q. Your answer is, then, that you do not know?

A. No; I do not know.

Q. There is full and complete co-operation between the Fed
Reserve banks in the matter of this par-collection business, is th
not?

A. The Federal Reserve banks of one district which have ite
payable in another district would send those items either to the F
eral Reserve banks or to some branch of the Federal Reserve bank
another district.

Q. I am speaking of the methods of collection in their distric

A. I am not advised as to whether the methods employed in
lection are uniform in all districts. The board has issued a regu
tion, but the regulation has some scope.

Q. Then, any difference that may exist would be a difference
methods of execution rather than a difference in the policy of th
plan?

A. There may be a difference in the methods of execution.

Q. Has not the Federal Reserve Board instituted what is know
as an inter-district collection system for all the twelve districts?

A. Well, we have an inter-district time schedule.

576 Q. Have you not issued a pamphlet, which was printed
the Government Printing Office at Washington, entitle
"Federal Reserve Inter-District Collection System?"

A. I do not recall it at the moment.

Q. You do not know of any such pamphlet as that?

A. If such a pamphlet has been issued it escapes my mind at th
moment. It may have been issued; I do not recall it. Have yo
such a pamphlet?

Q. I have not such a pamphlet in my possession now, but I am
informed that such a pamphlet exists, printed in the Governmen
Printing Office at Washington, with the title "Federal Reserve Inte
District Collection System."

A. I do not remember seeing it.

Q. Then you do not know of any such document?

A. No.

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Q. As a matter of fact, there is an inter-district collection system which embraces all the Federal Reserve banks and their branches, is there not?

A. Not as distinguished from the general collection system. Of course, if a collection is received by a member bank in one district and deposited with its Federal Reserve bank and the check is drawn on a bank in another Federal Reserve *bank*, that is an inter-district transaction.

Q. Have there or not been any regulations issued by the Federal Reserve Board as to the conduct of the inter-district collection of items by the Federal Reserve banks?

A. I do not recall any regulations issued on the subject of collections other than those issued in section J, which were issued in 1915 and 1916.

Q. Is there any such pamphlet with reference to the operation of the gold settlement?

577 A. Possibly some Federal Reserve bank may have issued some of these things; I do not know. They send them to the office, but I do not have time to read all these pamphlets and the literature of the various Federal Reserve banks. All the Board knows about the Federal Reserve system and the gold-settlement fund is contained in the annual report. There is a full discussion of it there.

Q. Has the Federal Reserve Board ever issued any regulations as to the reasonable charges for collection and payment for collection of drafts and remission therefor?

A. No; we have never issued any regulations covering that. Do you want to know the reason why we have not issued those regulations?

Q. Anything you wish to state, sir.

A. Section 13 of the Federal Reserve act has a proviso reading as following:

"Provided, further, That nothing in this or any other section of this act shall be construed as prohibiting a member of non-member bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed ten cents per hundred dollars or fraction thereof, based on the total of checks and drafts presented at any one time, or collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal Reserve banks."

We felt that if we attempted to make a regulation as to a charge for a non-member bank—although a non-member bank is included in this proviso—the regulation would not be respected. As a matter of fact, they are not respecting the law that Congress has laid 578 down here that they must not charge more than ten cents for each hundred dollars, upon the theory, I presume, that Congress has no right to regulate the intra-district jurisdictions of non-member banks with each other and other banks and their customers. So in those circumstances it is clearly useless for the Federal Reserve

E IN CENTER

Board to issue any regulations, and we have not issued any regulations under that proviso.

Q. Has the Federal Reserve Board issued any regulations as to the amount of exchange that could be charged by member banks to the public at large for collecting and remitting checks on distant points?

A. No; we have let that section of the act speak for itself.

Q. Then you have not issued any such regulations?

A. I think some of the Federal Reserve banks have called the attention of their member banks to this provision of the law, which is clearly binding on the member banks.

Q. Will you please define for me your understanding of the meaning of the expression "par clearance"?

A. The clearance of checks at par means receiving from the banks sending the checks and the collection from the banks upon which the checks are drawn of the full face amount of such checks; that is, the collection of checks without the deduction of any exchange charge at the drawee banks.

Q. Are you not confusing clearance with collection?

A. No, sir.

Q. Does not "par clearance" mean that you would receive a certain number of items from Bank A drawn on Bank B and a certain number of items drawn by Bank B on Bank A offset the amount of one against the other and clear the balance? Is not that what par clearance means without any deduction from either side for the
579 expense of the clearing?

A. As a matter of fact, the clearance is made ultimately through the Federal Reserve bank gold-settlement fund of all checks that are drawn, whether by or on member or non-member banks and whether those checks come directly to the Federal Reserve bank or not. Even in cases where banks maintain reciprocal accounts with one another, in the final settlement of those balances, in the last analysis, it gets involved in the clearing transactions between the Federal Reserve banks themselves through the gold-settlement fund. Now there is a difference between an exchange charge and a collection charge. I presume that is conceded, is it not?

Q. Will you describe what that difference is?

A. An exchange charge is a charge of a kind which I have just described, and a collection charge is a charge made by the bank in which a check is deposited. An exchange charge is a charge made by the drawee bank against the holder of a check who sends the check for collection, either direct or indirect. A collection charge is a charge made by a bank for services rendered in the collection of a check or a draft. In other words, checks drawn on banks are handled in a different manner from drafts drawn on individuals, firms or corporations. The draft drawn on the individual, firm, or corporation is written up in the collection department of the bank and is put in the hands of a runner, and the runner goes out and presents that draft at the office of the drawee. There is a special service and special human agencies have to be employed in making collections of miscellaneous drafts that are not employed in the handling of bank checks.

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Q. Then, the expense of maintaining these agents for the
580 presentation of checks on non-par banks is now borne by the Federal Reserve Banks as collection expense? They are amounts paid out for the collection of those checks?

A. They are amounts paid out for the collection of those checks.

Q. Was it not true under the old system that the expression "exchange" covered both these elements, the cost of the collection and the cost of the remittance of the proceeds?

A. Yes; I think under a loose construction of the word "exchange" both the collection charge and the exchange charge are consolidated under one head, commonly known as "exchange."

Q. Was it not customary for the city bank and the country bank to split that charge, one retaining part and the other retaining part? Was not that the custom when you were doing business in Birmingham?

A. No. In some cases where we absorb the charge altogether the country bank got it all.

Q. In other cases it was divided according to your arrangement with the bank?

A. According to the arrangement with the people from whom we received the checks. For instance, if we had an account of a merchant who carried an average balance of $20,000, and the deposits made with the bank were usually in cash, checks on local banks or checks on large cities, with just an occasional sprinkling of checks drawn on country banks, we would take all the checks and place them to his credit without any charge. In other cases where the account was small and where the great proportion of the deposits were made up of checks drawn on small towns where the banks maintained a high collection or exchange charge, we would charge the depositor with the transmit cost of collecting those checks.

581 Q. Did you not in that charge include the amount that the bank on which the check was drawn charged you for remitting the proceeds?

A. Yes; that was the whole purpose of it. We never made a charge that I know of against a man where he would deposit with us a check that we could collect without paying for it.

Q. But if it did cost you to get that check collected and to get the proceeds back into your bank and this man's account did not justify your rendering him that service for nothing, did you not make a charge, a part of which you would retain for your services and the balance of which you would remit to the payee bank or allow it to deduct from the proceeds of the check?

A. No; I do not remember of ever making a charge that more than covered the actual cost of collection.

Q. Is that confined to your own experience or your general observation?

A. It is my general observation. I think if I had tried to make a profit on the transaction the customer would have gone to some bank that was willing to come out even on it.

Q. Then, you do not know of any instance where the bank receiving a check drawn on an out-of-town bank deducted for ex-

SE IN CENTER

change and collection charges, a part of which it retained for itself and allowed the payee bank to deduct a part for itself?

A. I do not say that it may not have been done, but I do say that I do not know of any cases that ever came under my personal observation where it was done.

Q. If the Federal Reserve bank finally succeeds in establishing universal collection of checks at par by what is commonly known as the universal par-clearance system, will not the result be that
582 a check drawn on a given bank is, in effect, payable at any bank in the United States?

A. I do not think so. A check can only be payable at the counter of the bank on which it is drawn. It cannot be protested for dishonor anywhere else. I think you are confusing the word "payable" with the word "receivable." It may be receivable at any bank in the United States.

Q. Just what does the expression mean that is quoted from some of the literature on this subject, "A farmer's check worth 100 cents on the dollar anywhere in the United States"? Is that going to be the result of the universal par-clearance system?

A. Presumably so, yes. It is not strictly so because there is always the time involved in collecting the check, and the clearing-houses to which you referred this morning do authorize a charge on checks based on the time allowance in collecting them, which is in the nature of an interest charge for an advance of the money rather than an exchange charge for the collection of it.

Q. Then, the holder of that check gets 100 cents on the dollar only if he is willing to wait until it may be sent for and brought back to him?

A. Yes; but that interest charge is very much less than any exchange charge that has ever been made.

Q. That may be true, but it, nevertheless, is not true that you can get 100 cents on the dollar across the counter of any bank in the United States on a check drawn on a bank anywhere else in the United States by reason of the par-clearance system?

A. It is not true unless they use the Federal Reserve exchange where the check is also on the Federal Reserve bank, and arrangements have been made with any other Federal Reserve bank or branch in the United States to cash that check.

583 Q. But that would not be a farmer's check?

A. No. You know some country banks have their different views about the Federal Reserve par-clearance system. I wonder if you would care to have placed in the record the views of Mr. W. H. Doyle, cashier of a bank in Wisconsin, on that subject?

Q. I do not suppose there is a banker in the United States anywhere that has not had those views inflicted upon him. I do not think I would care to have them. I have seen them in publications all over the country.

A. I have a letter here from Mr. Doyle giving his views on the subject, if you would care to have it.

Q. Can you tell me who employs Mr. Doyle and pays his expenses in going around to the bankers' association to deliver that address?

A. I do not know.

Q. Under the progressive-interest policy that was adopted recently by the Federal Reserve Board why were banks penalized on the rates of interest charged?

A. That was done under the authority of paragraph (*d*) of section 14 of the Federal Reserve Act, which authorizes a Federal Reserve bank to establish from time to time, subject to review and determination of the Federal Reserve Board, rates of discount to be charged by the Federal Reserve bank for each class of paper, which shall be fixed with a view of accommodating commerce and business, and which, subject to the approval, review and determination of the Federal Reserve Board, may be graduated or progressed on the basis of the amount of the advances and discount accommodations extended by the Federal Reserve bank to the borrowing bank.

584 The theory that I think Congress had in mind when it made that amendment to the Federal Reserve Act about allowing the progressive rate was that our figures showed that something over one-third of all the member banks in the country were not discounting with the Federal Reserve banks at all; another third was discounting very heavily with the Federal Reserve banks, far beyond any amounts that they had been in the habit of borrowing before the Federal Reserve banks were established; while another third was discounting moderately, and the idea was that if a bank which was already heavily indebted to a Federal Reserve bank had to pay a higher rate for any future discount accommodations, it would let some of these banks that were not so badly extended and not discounting at all or not discounting heavily with the Federal Reserve bank have an opportunity to take over that business, and they could handle it and rediscount with the Federal Reserve bank at a cheaper rate than the bank which was already discounting heavily could.

Q. Did the matter of deficiency in reserve required by the law to be carried with the Federal Reserve banks have anything to do with that question of progressive rate of interest?

A. Not at all. That was handled entirely separately. Section 19 says:

"The required balance carried by a member bank with a Federal Reserve bank may, under the regulations and subject to such penalties as may be prescribed by the Federal Reserve Board, be checked against and withdrawn by such member bank for the purpose of meeting existing liabilities: Provided, however, That no bank shall at any time make new loans or shall pay any dividends unless and until the total balance required by law is fully restored."

585 The Federal Reserve banks generally have imposed a penalty upon banks for deficiencies in reserves which are greater than the discount rates for discounting paper. When a Federal Reserve bank discounts paper for a member bank it can use that paper with the Federal Reserve agent and get Federal Reserve notes which it can place in circulation, but where the member bank draws

down its reserves with a Federal Reserve bank the lending power and the note-issuing power with the Federal Reserve bank is correspondingly impaired.

Q. Does not a member bank frequently incur the penalty provided for by reason of deficiency in reserve when it has in the hands of the Federal Reserve bank in process of collection and on deferred credit an amount that would be greater in the aggregate than the amount of such deficiency?

A. Possibly so.

Q. Does not that often happen?

A. I do not know how often it happens. I know it happens. But I will call your attention again to the fact that that is "float" in transit, and those items are of no value whatever to the Federal Reserve bank. They are not available as such because the Federal Reserve bank cannot use them to meet its own obligations.

Q. Under your progressive interest rate rules what was the possible limit of interest rate that could be charged to any bank?

A. There was not any limit. I would like to state, however, that the progressive interest rate in the Atlanta district was abolished on the first of November, 1920; it was abolished in February, I think, in the Dallas district; but it was restricted in the Kansas City district early in the present year to a maximum of 12 per
586 cent, which has since been reduced to a maximum of 8 per cent. It was restricted in St. Louis in June to a maximum of 7 per cent and it has since been entirely abolished in the St. Louis district. I was told a few days ago by the Governor of the Federal Reserve Bank at Kansas City that at the next directors' meeting they proposed to suspend the operation of it in that district.

Q. In a very recent address by John Skelton Williams, delivered at Augusta, Georgia, I find reference by him to an occasion when certain policies were being discussed in the Federal Reserve Board which were being opposed on the ground that they might result in enforcing the failure or retirement from business of many small State banks throughout the country, and that a certain member of the Board, whom he does not name, remarked:

"If this plan means the failure of the small State banks, we need not stop it; in fact, if we cannot get rid of the small State banks by any other method, it might be as well to get rid of them that way."

Please state whether or not the subject that was then under discussion had any relation to the par clearance controversy.

A. I will state that I never heard any Board member make any such statement as that or anything like it.

Q. Then you do not know what the subject was that is alleged to——

A. No such discussion and no such conversation ever occurred at any meeting of the Board that I ever attended.

Q. Governor Harding, when the Hardwick amendment was up for consideration by Congress and I believe was in conference you addressed a letter, under date of May 10, 1917, to Honorable Carter Glass on the subject of that amendment, did you not?

A. Yes.

587 Q. I hand you what purports to be a printed copy of that letter. Please look that over and state whether that is a substantial copy of the letter?

A. It seems to be an exact copy of the letter as I recollect it.

Q. That was before the last sentence in the amendment, known as the Hardwick amendment, was inserted, exempting the Federal Reserve banks from exchange charges, had been adopted?

A. Yes.

Q. Was not that the reason for the insertion of that sentence in that amendment set forth by you in the letter to the chairman of the House Committee on Banking?

A. No; I do not think that was the reason. I think the reason for the insertion of that amendment was this: Both Senator Owen, who at that time was chairman of the Senate Committee on Banking and Currency, and the Honorable Carter Glass, then a Representative from the State of Virginia and now a Senator, who was chairman of the House Committee on Banking and Currency, were ardent advocates of the par clearance of checks. They wanted the universal par clearance system established in this country, and the legislative position of some amendment that was being considered by the Federal Reserve Act at that time was such—I think some resolution had been adopted in the House instructing the committee to report the Senate bill. It seemed that Senator Hardwick had put through the Senate this Hardwick amendment, which did not have the proviso that no such charges should be made against the Federal Reserve bank. The House Committee wanted to report an amendment with that proviso in it. But a resolution was put through the House instructing the House Committee to report the Senate bill. Chairman Glass was very anxious to have the matter considered in conference, and

588 he told me that he hoped some means would be found of inducing the Senate to modify its bill which the House Committee was instructed to report. After I had heard from Mr. Delano of this conversation that he had had with Governor Strong about the possible charges that might be made against Government checks I wrote this letter to Senator Glass. I presume he conferred with Senator Owen about it. Anyhow, the upshot of it was that the bill was amended so that the House Committee was then able to comply with the directions of the House and report the Senate bill, and the bill finally passed in the shape that you see it in the act.

Q. Did you not in that letter suggest to Mr. Glass that he should call the attention of Senator Owen to that possible expense to the Government in collecting proceeds of checks for Liberty Bonds?

A. I think that suggestion is made in the letter, is it not?

Q. Just what did you mean, as to making that suggestion, by this concluding remark, "This, I think, would give you the opportunity that you desire to handle the matter in conference?"

A. I have already explained what I meant by it, that the House Committee was under instructions to report the Senate bill without amendment, and, therefore, unless the bill could be amended in the

Senate, Mr. Glass would not be able to have the matter considered conference; and if the Senate changed its bill in any particular, under the instructions that the House had given its own commit it would have to go to conference and they could report it to the housess separately.

Q. Up to the time you wrote this letter to Mr. Glass the Senate h not changed its bill?

A. No.

589 Q. In the letter from Mr. Pool to you, dated Decemb 2, 1919, he calls your attention to a meeting at the S Charles Hotel in New Orleans, about two years prior to that tim at which he and a number of Louisiana bankers were present conference with you when this subject of par clearance is stat by him to have been under discussion. Do you recall that co ference?

A. Yes; Mr. Pool was there and Mr. Claiborne and some oth gentleman from up-State somewhere, whose name I do not remem ber. There were three present.

Q. Were there any other members of the Federal Reserve Boa present?

A. No.

Q. Was Mr. Pool then of the opinion that is disclosed by th letters that have been introduced in evidence on the subject of pa clearance?

A. He said he was opposed to par clearance. He was not then connected, though, with the Federal Reserve bank, but in spite of his opposition to the par clearance at that time, the Board ap pointed him a director of the Federal Reserve Bank of New Orlean

Q. For one year?

A. For one year.

Mr. Smith: Gentlemen, I think I have no further questions.

Cross-examination.

By Mr. Davis:

Q. Governor, are you able to tell us how many banks there are in the United States and of that number how many are clearing at par at this time and how many are not?

A. On June 15, 1921, the latest date for which the Fed 590 eral Reserve Board has the information available, the num ber of banks in the United States was 30,456, exclusive of mutual savings banks. Of this number 9,775 were member banks 18,718 were non-member banks remitting at par, and 1,935 were non-member banks not on the par list. Of the total number of banks, exclusive of mutual savings banks, in the United States over 93 per cent were banks remitting at par.

Q. How many of the Federal Reserve districts are 100 per cent par clearance?

A. Nine. All States, except eight Southern States, North Caro-

a, South Carolina, Alabama, Florida, Georgia, Louisiana, Mississippi, and Tennessee, are all par States.

Q. Will you please, as briefly as you can, tell us what advantages, your judgment, the par clearance system has for a depositor of payee bank and banks in general and the general public?

A. I think that is all brought out in the annual report. Briefly, e advantage is that it gives an additional circulating medium hich can be used at a minimum of expense, and it makes the check awn on the local bank in a small town just as available as a part the check circulating medium of the country as a check drawn a bank in New York City or Chicago.

Q. Did your board in putting into effect the par collection system have any intent, desire, or purpose whatsoever to injure any nk or to force membership in the Federal Reserve system upon ny bank, or to deplete the revenues of any bank?

A. No, sir; it did not.

Q. What was your real purpose in establishing the par collection system?

A. Primarily to carry out the implied purpose of the Federal Reserve Act to facilitate the exchange of bank credits 91 throughout the country; to furnish a convenient, effective means for the people to make remittance from one section to nother at a minimum of cost.

Q. With reference to the non-par States that you have named, n you tell us how many banks in each State are remitting at par d how many are not?

A. This is up to a recent date; it may not be exactly accurate as today, but it was correct a few days ago. North Carolina, total mber of banks, 603; number not remitting or not on the par st, 222. South Carolina, total number of banks, 462; number t remitting at par, 332. Alabama, total number of banks, 376; mber not on par list, 215. Florida, total number of banks, 268; mber not remitting at par, 137. Georgia, total number of banks, 4; number not on the par list, due very largely to this injunction, 467. Louisiana, total number of banks, 293; number not on r list, 104. Mississippi, total number of banks, 333; number t remitting at par, 277. Tennessee, total number of banks, 576; mber not remitting at par, 151. Then we have, for special reaons, not on the par list in Minnesota 4 banks; in North Dakota, 7 banks; in South Dakota, 38 banks, and in Wisconsin, 4 banks. There may be special reasons why the Federal Reserve Bank of Minneapolis does not care to collect those checks from those banks.

Q. The rest of the country is all at par?

A. Yes, sir.

Mr. Davis: That is all, I think.

Redirect examination.

By Mr. Smith:

Q. Do you know, Governor, how many of the non-par non-member banks out of the 18,718, which you have just testified
592 about, are now remitting at par rather than be subjected to having their checks presented for payment in currency over their counters?

A. I do not know.

Q. Do you or not know that any of them have agreed to remit at par rather than be subjected to that hardship?

A. I do not know the number; possibly some of them have.

Mr. Smith: That is all, sir.

(Signed) W. P. G. Harding.

DISTRICT OF COLUMBIA, *ss:*

Answered, subscribed and sworn to before me this 19th day of August, 1921. (Signed) George W. Reik, Notary Public in and for the District of Columbia.

Harding Exhibit No. 2.

Federal Reserve Board.

Washington, June 22, 1917.

The Federal Reserve Board transmits herewith a new issue of its regulations of 1916 applicable to member banks. This revision was necessitated by the enactment of the recent amendments to the Federal Reserve Act.

Regulations C, H, and J, have been materially altered because of those amendments. Regulation D has been amended so as to include postal savings deposits in the definition of a "time deposit" as required by the recent amendment to section 19. Regulation G has been amended by adding a paragraph relating to the renewal of loans upon the security of real estate. Regulations A,
593 B, E, F, and I are identically the same as last year.

Instructions which concern only Federal Reserve agents or Federal Reserve banks will be covered in separate letters or regulations, as in the past. W. P. G. Harding, Governor. H. Parker Willis, Secretary.

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Harding Exhibit No. 3.

Regulation J, Series of 1917 (*Superseding Regulation J of* 1916).

Check Clearing and Collection.

Section 16 of the Federal Reserve Act authorizes the Federal Reserve Board to require each Federal Reserve bank to exercise the function of a clearing-house for its member banks, and section 13 of the Federal Reserve Act, as amended by the act approved June 21, 1917, authorizes each Federal Reserve bank to receive from any non-member bank or trust company, solely for the purposes of exchange or of collection, deposits of current funds in lawful money, national bank notes, Federal Reserve notes, checks, and drafts payable upon presentation, or maturing notes and bills, provided such non-member bank or trust company maintains with its Federal Reserve bank a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank.

In pursuance of the authority vested in it under these provisions of law, the Federal Reserve Board, desiring to afford both to the public and to the various banks of the country a direct, expeditious, and economical system of check collection and settlement of balances, has arranged to have each Federal Reserve bank exercise the functions of a clearing-house for such of its member banks as desire to avail themselves of its privileges and for such state banks and trust companies as may maintain with the Federal Reserve bank a balance sufficient to qualify it as a clearing member under the provisions of section 13.

Each Federal Reserve bank shall exercise the functions of a clearing-house under the following general terms and conditions:

(1) Each Federal Reserve bank will receive at par from its member banks and from non-member banks in its district which have become clearing members, checks[1] drawn on all member and clearing member banks and on all other non-member banks which agree to remit at par through the Federal Reserve bank of their district.

(2) Each Federal Reserve bank will receive at par from other Federal Reserve banks and will receive at par from all member and clearing-member banks, regardless of their location, for the credit of their accounts with their respective Federal Reserve banks, checks drawn upon all member and clearing-member banks of its district and upon all other non-member banks of its district whose checks can be collected at par by the Federal Reserve bank. The Federal Reserve banks will prepare a par list of all non-member banks, to be revised from time to time, which will be furnished to member and clearing-member banks.

[1] A check is generally defined as a draft or order upon a bank *or order upon a bank* or banking house, purporting to be drawn upon a deposit of funds, for the payment at all events of a certain sum of money to a certain person therein named, or to him or his order, or to bearer, and payable instantly on demand.

(3) Immediate credit entry upon receipt subject to final ment will be made for all such items upon the books of the Fe Reserve bank at full face value, but the proceeds will not be co as part of the minimum reserve nor become available to meet drawn until actually collected, in accordance with the best pr now prevailing.

(4) Checks received by a Federal Reserve bank on its memb clearing-member banks will be forwarded direct to such banks will not be charged to their accounts until sufficient time has el within which to receive advice of payment.

(5) In the selection of collecting agents for handling check non-member banks, which have not become clearing-members, ber banks will be given the preference.

(6) Under this plan each Federal Reserve bank will receive from its member and clearing-member banks checks on all mem and clear-member banks and on all other non-member banks w checks can be collected at par by any Federal Reserve bank. M ber and clearing-member banks will be required by the Fed Reserve Board to provide funds to cover at par all checks rece from or for the account of their Federal Reserve banks: Provi however, That a member or clearing-member bank may ship rency or specie from its own vaults at the expense of its Fed Reserve bank to cover any deficiency which may arise becaus

and only in the case of inability to provide items to c
596 checks received from or for the account of its Federal Res bank.[1]

(7) Section 19 of the Federal Reserve Act provides that—

The required balance carried by a member bank with a Fed Reserve bank may, under the regulations and subject to such pe ties as may be prescribed by the Federal Reserve Board, be check against and withdrawn by such member bank for the purpose meeting existing liabilities: Provided, however, That no bank sh at any time make new loans or shall pay any dividends unless until the total balance required by law is fully restored.

It is manifest that items in process of collection cannot lawfu be counted as part of the minimum reserve balance to be carried a member bank with its Federal Reserve bank. Therefore sho a member bank draw against such items the draft would be charg against its reserve balance if such balance were sufficient in amo to pay it; but any resulting impairment of reserve balances wo be subject to all the penalties provided by the act.

Inasmuch as it is essential that the law in respect to the ma tenance by member banks of the required minimum reserve balan shall be strictly complied with, the Federal Reserve Board, und authority vested in it by section 19 of the act, hereby prescribes the penalty for any deficiency in reserves a sum equivalent to

[1] In accordance with instructions issued by the Federal Reserve Board April 24, 1917, the various Federal Reserve banks have issued circulars set forth the conditions under which their respective member banks may dr drafts on their Reserve bank accounts payable with or through any other Fe eral Reserve bank.

est charge on the amount of the deficiency of 2 per cent per annum above the ninety-day discount rate of the Federal Reserve bank of the district in which the member bank is located. The Board reserves the right to increase this penalty never conditions require it.

For the purpose of keeping their reserve balances intact member ks may at all times have recourse to the re-discount facilities ed by their respective Federal Reserve banks.

8) Each Federal Reserve bank will determine by analysis the unts of uncollected funds appearing on its books to the credit ach member bank. Such analysis will show the true status of reserve held by the Federal Reserve bank for each member bank will enable it to apply the penalty for impairment of reserve.

schedule of the time required within which to collect checks be furnished to each bank to enable it to determine the time hich any item sent to its Federal Reserve bank will be counted eserve and become available to meet any checks drawn.

9) In handling items for members and clearing-member banks, ederal Reserve bank will ask as agent only. The board will re- e that each member and clearing-member bank authorize its eral Reserve bank to send checks for collection to banks on which cks are drawn, and, except for negligence, such Federal Reserve k will assume no liability. Any further requirements that the rd may deem necessary will be set forth by the Federal Reserve ks in their letters of instruction to their member and clearing- mber banks. Each Federal Reserve bank will also promulgate es and regulations governing the details of its operations as a clearing-house, such rules and regulations to be binding upon all member and non-member banks which are clearing through the Federal Reserve bank.

(10) The cost of collecting and clearing checks must necessarily borne by the banks receiving the benefit and in proportion to service rendered. An accurate account will be kept by each erve bank of the cost of performing this service and the Federal erve Board will, by rule, fix the charge, at so much per item, ich may be imposed for the service of clearing or collection ren- ed by the reserve banks, as provided in section 16 of the Federal erve Act.

I, George W. Reik, a notary public in and for the District of Co- mbia, do hereby certify that the foregoing deposition of W. P. G. rding was taken down by me in short-hand, at the time and e stated in the caption thereof from the oral statements of the ness giving the same; that the said witness was by me first duly rn to testify the truth, the whole truth and nothing but the truth ching the matters in controversy; that said deposition was sub- uently accurately reduced to typewriting under my direction and s then by the said witness duly subscribed in my presence.

I further certify that I am not of counsel or attorney for either ty to this cause nor in anywise interested in the result thereof, d that my fees for taking this deposition, amounting to $73.00, e been paid by the plaintiff.

In testimony whereof I hereto subscribe my name and affix my
this 20th day of August, 1921. (Signed) George W. Reik, N
Public in and for the District of Columbia.

599 **In United States District Court.**

Stipulation of June 6th, 1922.

Judge Beverly D. Evans, having tried the above stated case
died before the appeal therein was perfected, it is stipulated betw
Counsel for Plaintiffs and Defendants as follows:

1. The answers of defendants to questions numbered one (1
three hundred sixteen (316) inclusive, propounded to them un
Equity Rule number fifty-eight (58), were tendered in evidence
defendants and objected to by plaintiffs on the ground (*a*) th
said answers were joint and not several, and (*b*) that under s
rule fifty-eight (58) each of the defendants should have answer
each of said questions separately and fully in writing under o
and (*c*) that said answers of each defendant separately should ha
been signed and filed by him.

Said objections were overruled, and said answers admitted in e
dence and plaintiffs duly excepted thereto.

Prior to the tender by the defendants of the said answers to qu
tions numbered one (1) through three hundred and sixteen (31
the plaintiffs had introduced in evidence numerous documen
called for by said interrogatories and duly attached thereto as exhi

2. The evidence of the several witnesses named in assignment
error numbered 10 (10) to sixty-nine (69) inclusive was tender
by plaintiffs as therein set forth and objected to by defendants
the ground that testimony of said witnesses related to matters
inter alios acta and that defendant Federal Reserve Bank of Atla
should not be prejudiced by any act of Federal Reserve Banks
other districts.

600 These objections were sustained and said testimony w
ruled out by the Court, and plaintiffs duly excepted there

3. The testimony of George D. Wood set forth in the tenth (10th
assignment of error was tendered, objected and ruled out after t
amendment of January 11th, 1922, was allowed, and before t
order disallowing the intervention referred to in the eighth (8th
assignment of error was signed.

4. It is further stipulated that the technical disqualification
Judge Samuel H. Sibley in said case is hereby waived in so far a
the entering of necessary orders to perfect the appeal in said case a
concerned and all parties agree that he may sign the citation an
the orders allowing the appeal, the supersedeas and the orders a
proving the bond and making parts of the record the several stipul
tions of counsel in said case.

This 6th day of June, 1922. Orville A. Park, Alex W. Smit
Theodore H. Smith, Plaintiff's Solicitors. Hollis N. Randolph, Ro
ert S. Parker, Defendant's Solicitors. John W. Davis, Of Counse

The foregoing stipulation is ordered filed and made part of the record in said case. This June 6th, 1922. Sam'l H. [illegible]ley, U. S. Judge.

Filed in Clerk's Office June 9th, 1922.

In United States District Court.

Stipulation as to Evidence on Appeal.

It is hereby stipulated by counsel for the plaintiffs and inter[illegible]ners and by counsel for the defendants in the above stated case [illegible]t the following evidence only shall be included in the record essential to the decision of the questions presented by the ap[illegible]l from the final decree in said case stated March 25, 1922, and [illegible]t the same may be included by the clerk in his certified tran[illegible]ipt of record in the forms hereinafter stated, to-wit:

(NOTE.—The pamphlets referred to in the next two succeeding [illegible]ragraphs of this stipulation, numbered 1 and 2 respectively, as [illegible]led in the Clerk's office by counsel for plaintiffs, show portions the subject matter printed in italics. It is stipulated that said [illegible]lics shall be disregarded by the Court and in case the record made pursuant to this stipulation is reprinted from the documents [illegible]rified, such portions so italicized shall be printed in regular type.)

1. The documentary evidence as printed in pamphlet designated [illegible]pplement No. 1, heretofore lodged in the clerk's office by coun[illegible]sel for complainants for the examination of defendants and [illegible]2 their counsel, and the clerk may certify and send up such printed copy of this supplement as part of the record in this [illegible]se.

2. The oral testimony taken in said case as condensed and [illegible]nted in a pamphlet designated as Supplement No. 2 and lodged [illegible] the clerk's office by the complainant's solicitors for examination [illegible] the defendants or their counsel, and the clerk may certify such [illegible]nted copy of this pamphlet, with the changes or modifications [illegible]reinafter indicated, as part of the record in said case. The modi[illegible]ations to be made in the subject matter of the printed pamphlet [illegible]ferred to in this paragraph shall be as follows, to-wit:

Page 61, line 13, testimony of L. C. Adelson, add after the words: [illegible]ave voluntarily joined," the words "the Federal Reserve System."

Page 63, lines 26 and 27, the words "those who refuse to remit [illegible]par" should be stricken.

Page 69, lines 4 and 5, the following words should be omitted: [illegible]e are not trying to give them something they will not want, but."

Page 69, line 9, beginning with the words: "it is one of the slo[illegible]ans, etc.," and ending with the words "at the counter of the drawee [illegible]ank" should be rephrased so as to read as follows: "a farmer's [illegible]heck for $5.00 ought to be worth 100 cents on the dollar at the [illegible]ounter of the drawee bank."

Page 69, the last two lines on said page, the phrase "as to
there is no such thing as par clearance" should be omi
603 3. The interrogatories propounded by the complainan
the defendants under Rule 58, and the answers thereto,
of file in the office of the clerk, and the clerk may certify the s
as printed in the first 133 pages of the printed copy thereof he
fore lodged in the clerk's office by complainants' solicitors for
amination of the defendants and their counsel.

4. The depositions of Hon. W. P. G. Harding, taken in W
ington, D. C., July 22, 1921, and heretofore filed in the cle
office and the clerk may certify the same as printed in pamp
form heretofore lodged in the clerk's office for the examination
the defendants and their counsel.

Exhibit No. 1 to these depositions is not included in said pamp
and need not be certified. It consists of the Seventh Annual
port of the Federal Reserve Board made to the Speaker of
House of Representatives by the Governor of the Federal Rese
Board, covering operations for the year 1920, pursuant to law, a
printed as a public document in the Government Printing Off
in 1921; and it is stipulated that counsel for both sides and
Judges of the Appellate Courts may consider such parts as
public document as may be referred to in argument without
necessity of reprinting the same in the transcript of record in
case. It is further stipulated, however, that the following porti
of said Seventh Annual Report of the Federal Reserve Board
introduced in evidence in words and figures as follows, towit:

Extract From Seventh Annual Report of Federal Reserve Board.

"Check Clearing and Collection.

"Substantial progress has been made during the year in the devel
opment of the Federal Reserve check clearing and collection
604 system. During the year 11 States—Virginia, West Virginia,
Kentucky, North Carolina, Arkansas, Arizona, Wisconsin,
Minnesota, South Dakota, Washington, and Oregon—have been
added to the number of States in which all banks are on the par
lists of the Federal Reserve Banks. On January 1, 1920, checks
on all but 3,996 of the 29,557 banks in the United States could be
collected at par through the Federal Reserve Banks. On January
1, 1921, checks on all but 1,755 of the 30,523 banks in the United
States could be thus collected. These 1,755 banks are all located
in the following seven States of the Southeast: Tennessee, South
Carolina, Louisiana, Mississippi, Alabama, Georgia, and Florida.
Consequently, every bank in 9 of the 12 Federal Reserve districts
is on the par lists, the three districts in which there remain any
nonpar banks being those of Richmond, Atlanta, and St. Louis.

'This development in the check clearing and collection system
has been accomplished in the face of continuous opposition on the
part of some member and non-member banks. It is evident that

s the merits of par collection are becoming more widely known
ewer banks are participating in the opposition, but the banks which
ontinue to oppose par collection are well organized and their op-
osition appears to be as vigorous as ever.

"In order to present clearly the issue involved in the controversy
ver par collection, it is necessary to review the history of the de-
elopment of the check-collection system under the Federal Re-
erve Act. That history is given at some length in the letter of
he Governor of the Federal Reserve Board, dated January 26,
920, to the President of the Senate in response to Senate resolu-
ion No. 284 of January 19, 1920. This letter was printed as Senate
Document No. 184.

605 "The provisions of the Federal Reserve Act which relate to check clearing and collection were last amended by the Act of June 21, 1917, Section 16 provides that the Federal Reserve Board may act as a clearing house for the Federal Reserve Banks and may require those banks to act as clearing houses for their member banks. Section 13 as amended by the so-called 'Hardwick amendment' of June 21, 1917, provides that Federal Reserve Banks may receive on deposit 'checks and drafts payable upon presentation,' the checks which those banks are authorized to receive on deposit not being limited, as they were prior to the amendment, to checks on solvent member banks.' The proviso at the end of the first paragraph of Section 13 reads:

"'That nothing in this or any other section of this act shall be construed as prohibiting a member or nonmember bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal Reserve Banks."

"As construed by the Attorney General, and as recently held by he United States Circuit Court of Appeals, Fifth Circuit, these provisions prohibit the Federal Reserve Banks from paying exchange harges to member or nonmember banks.

"It is apparent that if Federal Reserve Banks in their capacities s clearing houses are to render full service to their member banks, they must clear checks drawn on all banks including those 606 nonmember banks, now few in number, which decline to remit at par. Consequently, the Board has approved the ction of the Federal Reserve Banks not only in soliciting nonmember banks to agree to remit at par but also in collecting by presentaon at the counter checks drawn on non-member banks which deline to remit at par.

"Opposition on the part of the banks against par collection has aken various concrete forms. Since Federal Reserve Banks can ot pay exchange charges, when nonmember banks refuse to remit t par the Federal Reserve Banks have no choice, if they are to collect he checks drawn on those nonmember banks but to make presenta-

tion of such checks at the counters through selected agents. These agents may be employees of the Federal Reserve Banks or may be banks, express companies, or any other suitable agents located in the same town. The employees and agents of the Federal Reserve Banks have encountered various obstacles in making presentation of checks such as the tender of payment in a manner calculated to take as much time as possible, or the refusal of payment in reliance on the inability of the agent to find a notary public willing to make protest. The Board has been advised of one instance where a duly appointed agent has within a few days after appointment given notice to the Federal Reserve Bank that he would no longer act as agent for fear of injury to his business.

"Other banks, including some member banks, have resorted to the devise of stamping legends on their blank checks to the effect that the check is not valid if presentation is made through the Federal Reserve Banks.

"On January 22, 1920, a number of nonmember banks filed a petition in the Superior Court of Fulton County, Georgia, for an injunction restraining the Federal Reserve Bank of Atlanta
607 from collecting checks drawn on the plaintiff banks in any manner other than through the mails. The suit was transferred to the United States District Court for the Northern District of Georgia, which dismissed the complaint upon the merits. The decision of the District Court was affirmed by the United States Circuit Court of Appeals for the Fifth Circuit on November 19, 1920, and the case has now been appealed to the Supreme Court of the United States. The restraining order, obtained by the plaintiff banks at the commencement of the suit, has been continued pending the appeals to the Circuit Court of Appeals and the Supreme Court of the United States; and this accounts in large part for the fact that no material progress has been made by the Federal Reserve Bank of Atlanta in adding to the number of banks whose checks it can collect at par.

"The legislatures of five States, namely, Mississippi, Louisiana, South Dakota, Georgia, and Alabama, have enacted laws for the express purpose of preventing the Federal Reserve Banks from collecting, at par, checks drawn on the banks located in those States. The Mississippi law purports to require all banks within the State, including national banks, member banks, and nonmember banks, to make charges 'for collecting and remitting' cash items which 'are presented to the payer bank for payment through or by any bank, banker, trust company, Federal Reserve Bank, post office, express company, or any collection agency, or by any other agency whatsoever.' The laws of the four other States are not mandatory, but merely purport to give to all banks within the respective States the right to make similar charges. The laws of Mississippi, Louisiana, South Dakota, and Alabama prohibits any officer of the respective States from protesting any check for non-payment, when
608 such nonpayment is on account of the refusal on any such agency to pay exchange, and the laws of Mississippi, Louisiana, and South Dakota further provide in terms that 'there shall

be no right of action, either at law or in equity, against any bank in this State for a refusal to pay such cash item, when such refusal is based alone on the ground of the non-payment of such exchange.' The Federal Reserve Board has taken the position that these laws are clearly unconstitutional in so far as they purport to require national banks, and State banks which have joined the Federal Reserve System, to make exchange charges against Federal Reserve Banks.

"The Board has obtained no opinion as to the constitutionality of the laws in so far as they purport to affect nonmember State banks, believing that this is a question which can be settled only by the Courts. Prior to the enactment of the South Dakota and Louisiana laws, all banks in South Dakota, and in that part of Louisiana which is located in the Eleventh Federal Reserve District, had been placed upon the Federal Reserve Bank par lists, and the Federal Reserve Banks of Minneapolis and Dallas have since the enactment of those laws continued to receive for collection at par all checks drawn on those banks.

"In February the Board's attention was called to certain charges made by State bankers in Nebraska that employees of the Omaha branch of the Federal Reserve Bank of Kansas City had acted in an unseemly manner and had used oppressive methods in the presentation of checks on nonmember banks. The Board held hearings on February 24, 25 and May 5 to inquire into these alleged acts and methods, at which hearings the Federal Reserve Bank officials and employees involved were examined under oath and denied
609 the charges in every particular. The hearings were attended by a delegation of Congressmen from Nebraska, and the State bankers making the charges and their witnesses were also invited to be present. For the convenience of the latter the Board offered to have a committee of its members hold a hearing in Nebraska. No witnesses on behalf of the State bankers were produced, however, and the only evidence submitted in support of the charges consisted of a series of affidavits. In no instance, in the Board's opinion, was any specific charge of improper conduct on the part of an employee of the Omaha branch substantiated.

"In view of all the circumstances, and at the request of some of the opponents of par collection, the Board concluded to present the facts to Congress for such action as that body might care to take. In accordance with this determination the Board on May 5, 1920, addressed a letter to the chairman of the Banking and Currency Committee of the House of Representatives. In this letter the Board called attention to the persistent opposition to par collection and to the obstacles which the Federal Reserve Banks were encountering, and suggested that the committee might deem it advisable to consider whether the par collection of checks should continue to be a function of Federal Reserve Banks, with a view to recommending a future amendment to the law which would either remove the obstacles standing in the way of par collection at the present time or permit both member and nonmember banks to make exchange charges against the Federal Reserve Banks, such

charges, of course, to be reimbursed to the Federal Reserve Banks by the banks sending the checks for collection.

"The Board is thoroughly convinced of the advantages of a universal system for the par collection of checks, and it brought the matter to the attention of Congress, not because of any 610 doubt on its part as to the effect of the law, but because the issue involved the propriety of the legislation itself. The Board has frequently had occasion to point out that in their origin exchange charges were justified on account of the necessity for, and the high cost of, actually transporting currency, but that under existing conditions those charges can be justified upon no scientific or economic principle, since the payment of checks at places other than where the drawee banks are located involves little expense and that is borne by the Federal Reserve Banks. Even the banks which decline to remit at par to the Federal Reserve Banks receive the benefits of the Federal Reserve Check-clearing facilities by having the checks which they receive collected through a correspondent bank which is a member of the Federal Reserve System although they contribute nothing to the strength of the system. To the extent that the practice of charging exchange is continued under the operation of the Federal Reserve System, it is an anachronism which permits the charging banks to impose a charge upon commerce and industry after they have ceased to perform the service which in former times justified the imposition of such a charge. In this connection the following is quoted from a letter dated April 1, 1920, addressed by the Board to a United States Senator:

"'Since the establishment of the Federal Reserve Banks the cost of transferring balances from one section of the country to another has been almost entirely eliminated. Each Federal Reserve Bank carries a portion of its gold reserve in a gold settlement fund which is kept in the Treasury at Washington, and there is a daily telegraphic clearing conducted by the Federal Reserve Board for all 12 banks and for their branches. The amount of gold in 611 the fund is practically a stable quantity, but its ownership varies from day to day according to the debits and credits to the different banks. Transfers are made by the Federal Reserve Banks for member banks, and also for nonmember banks through the medium of member banks, by telegraph without any charge whatever to the member bank or its client, all costs being borne by the Federal Reserve Banks. Thus a bank in Wisconsin or California, Maine or Texas, can secure an instantaneous transfer to any one of the 12 Federal Reserve cities or to the 20 cities where there are branch Federal Reserve Banks without any expense whatsoever, and the sum total of these transfers is settled daily through the gold settlement fund above referred to. The Federal Reserve Banks pay all costs of transporting currency to or from their member banks as well as transportation charges on currency sent them by nonmember banks in payment of checks.

"'The total volume of transactions through the gold settlement fund in the year 1919 was approximately $74,000,000,000, and the total cost, including the expense of the leased wires, was about

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$250,000. This cost was borne by the Federal Reserve Banks and does not represent any expense whatever to the member banks or their customers. Thus it will be seen that the basic cost of making domestic exchange in the year 1919, was 0.03 of a cent for each $1,000 transferred. A charge of 10 cents per $100 on the amount cleared through the gold settlement fund would have involved an expense of $1 for each $1,000 transferred, or about $74,000,000 for the entire amount.

"'The intradistrict clearings made by the Federal Reserve Banks, eliminating duplications, amounted to about $135,000,000,000, and the total expense of these transfers was borne by the
612 Federal Reserve Banks. Had the Federal Reserve Banks been obliged to pay for these transfers at the rate of 10 cents per $100, it will be seen that the total expense would have been $135,000,000, which amount is far in excess of the total earnings of the Federal Reserve Banks and therefore could not have been absorbed by them. If not absorbed, the charge would have had to have been transferred to the depositors of the checks, so it will be seen that a charge of 10 cents per $100 upon the business handled by the Federal Reserve Banks would have involved last year a cost to the commerce and industry of this country of at least $135,000,000.'

"The Federal Reserve Board believes that the present terms of the Federal Reserve Act imposes upon it the duty of developing and maintaining the Federal Reserve par collection system, while the opponents of par collection vigorously urge the contrary view. The opinion of the United States Circuit Court of Appeals, previously referred to, decisively upholds the Board's point of view, and, Congress having taken no action in the matter of further legislation on the subject, the Board will, of course, regard as binding upon all parties the final interpretation of section 13 of the Federal Reserve Act by the Supreme Court of the United States. Consequently, unless that Court reverses the decision of the United States Circuit Court of Appeals, the Board will assume that Congress desires the Federal Reserve Board and the Federal Reserve Banks to continue, as heretofore, to develop and perfect the Federal Reserve par collection system.

"Until the United States Supreme Court renders its decision in the appeal now pending before it, the opinion of the United States Circuit Court of Appeals must, of course, be regarded as
613 conclusive as to the construction of the law. The following extract from that opinion sustains in every respect the position which the Board has always taken that its duty under the law as it now stands is to develop and perfect the Federal Reserve par collection system:

"'The principle that one must so use his property as not to unnecessarily and maliciously injure his neighbor, even though his act is otherwise lawful, is also invoked. Conceding that the accumulation of checks, and their presentation, when accumulated, with the intent to embarrass and injure the drawee bank, might constitute an actionable wrong and one that might be prevented by injunction,

we do not think the amended bill presents any such case. There is no specific charge in the bill of any threat to present the checks in any accumulated or oppressive manner, on which a Court of equity would be justified in acting. Nor does the bill charge the appellee bank with acting from a merely malicious motive, if that is material. It does aver that the purpose of the appellee was to compel the appellants, to accept the lessor of two evils and to remit at par for checks drawn upon it. If this charge was borne out by the exhibits, which it is not, it would not constitute legal duress, on which a legal complaint could be predicated. The exhibits show that the adoption of a system of universal par clearance was advocated in good faith by the appellee bank as a proper banking policy, and as well by Congress and the Federal Reserve Board. The adoption of appropriate means of the appellee bank to accomplish this end can not with any propriety be attributed to malice on the part against appellants and other banks in like condition. Nor does the adoption of the method of presenting checks over the counters of the drawee bank imply an attempt to coerce them into becoming member
614 or depositing banks. The Federal Reserve Bank was interested to supply a universal clearance at par for its member and depositing banks. It could accomplish this only by accepting from its member depositing bank all checks tendered it by them upon whatever bank drawn. If drawn upon a non-member and non-depositing bank, which refused to remit at par, it was disabled under the statute from handling such checks through the method of transmission of the checks and remittance of the proceeds through the mails. It could only collect such checks by presentation in person to the drawee bank. It is therefore, reasonable to suppose that its declared purpose of making such presentation as in furtherance of its policy of furnishing complete clearing facilities to its member banks, and was not for the purpose of injuring or destroying the drawee bank, or of coercing them into becoming member or depositing banks with it. It constituted an essential step without which universal par clearance was not possible of accomplishment.'

"In the following table are given the number and amount of checks and drafts handled by the Federal Reserve Banks during monthly periods in 1920:

(Exclusive of Duplications on Account of Items Being Handled by More Than One Federal Reserve Bank or Branch.)

Month ending—	Total items, number.	Handled, amount, thousand dollars.	Items drawn on banks in district of reporting F. R. bank or branch.		Items drawn on United States treasurer.		Items forwarded direct to members and nonmembers in other F. R. districts.	
			Number.	Amount, thousand dollars.	Number.	Amount, thousand dollars.	Number.	Amount, thousand dollars.
Jan. 15, 1920	33,208,287	14,044,656	31,212,530	13,208,384	1,990,362	743,821	5,395	2,451
Feb. 15, 1920	30,867,486	12,519,612	29,165,181	11,958,671	1,697,090	558,926	5,215	2,015
Mar. 15, 1920	33,568,251	13,156,260	31,996,561	12,645,919	1,565,935	509,415	5,965	1,826
Apr. 15, 1920	38,406,451	14,451,902	36,207,429	13,567,468	2,192,547	882,565	6,475	1,869
May 15, 1920	37,176,038	12,820,472	34,480,874	12,339,093	2,689,238	479,638	5,926	1,741
June 15, 1920	36,459,470	12,843,671	34,487,372	12,331,819	1,965,436	509,831	6,662	2,021
July 15, 1920	37,553,352	13,618,805	35,127,057	12,689,571	2,418,982	927,221	7,313	2,073
Aug. 15, 1920	37,052,000	12,303,370	35,045,843	11,918,337	1,999,664	383,068	6,553	1,965
Sep. 15, 1920	38,541,139	12,880,327	36,541,102	12,313,878	1,992,827	564,334	7,210	2,115
Oct. 15, 1929	40,674,502	13,677,098	38,156,780	13,247,060	2,510,644	427,398	7,078	2,640
Nov. 15, 1920	41,390,208	13,090,293	38,402,450	12,673,791	2,980,658	414,296	7,100	2,206
Dec. 15, 1920	41,764,941	12,093,079	39,082,305	11,604,936	2,675,292	486,043	7,344	2,100
Total	446,671,185	157,499,605	419,905,484	150,588,027	26,687,735	6,886,556	77,966	25,022
Monthly average	37,222,598	13,124,967	34,992,124	12,549,002	2,223,978	573,880	6,497	2,085

616 Exhibits Nos. 2 and 3 to said Harding depositions are reprinted in said pamphlet and may be certified as a part thereof in the printed form above stated.

5. It is further stipulated that the exhibits to the interrogatories of the defendants filed with their answers to the interrogatories propounded under Rule 58 need not be included in the record except in so far as they are embraced in the portions of the record hereinbefore specified, and except as hereinafter stated.

6. It is stipulated that Exhibit C to said interrogatories of the defendant under rule 58 discloses the payment of various and sundry exchange charges by the defendant Federal Reserve Bank, aggregating $2,597.48—said separate items having been paid from the period of August 29, 1919 to August 24, 1921, and that the separate items making said aggregate need not be set forth in the transcript in said case. The defendants detailed disclosure of the various items of exchange paid as made in the said interrogatories, was accompanied with the following explanation, made a part of said interrogatories:

Extract From Exhibit C to Interrogatories.

"The aggregate amount of exchange paid, as shown by the attached Exhibit, is approximately $2,500, but attention is directed to the fact that over $1,600 of that amount was paid out during the month subsequent to the filing of the restraining order, on cash items which the Federal Reserve Bank of Atlanta had believed in good faith could be collected at par, but which because of the restraining order and circumstances beyond its control, it was not able to do. The aggregate amount of such checks that were thrown back upon

617 the Federal Reserve Bank of Atlanta, and the period that had elapsed since they were received from the sending banks, were such that, after consultation with Counsel, it was believed that we had incurred liability to such an extent that, in event anything should happen between the date of the return of the checks and the time they could again be presented, the Federal Reserve Bank of Atlanta would perhaps sustain a large loss. Therefore, as a matter of business prudence, the checks were forwarded for collection and exchange deducted by the payee bank was paid.

"The remaining $900 represents, to a certain extent, exchange paid on checks erroneously sent to the Federal Reserve Bank of Atlanta by other Federal Reserve Banks or member banks, under the assumption that the points on which they were drawn were on the par list. In such cases, if the amount was appreciable, the Federal Reserve Bank or member bank was communicated with by wire, and if they specifically directed that the check or checks be forwarded as purely collection items and exchange be paid to the remitting bank, their request was complied with. A number of the larger items of exchange appearing in our list arose under such circumstances. Some few may have arisen because of erroneous handling in the Transit Department of the Federal Reserve Bank of Atlanta.

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"It will be further noted that in the largest number of cases where exchange was paid, the amount was around ten cents. The majority of these cases were checks deposited with the Federal Reserve Bank of Atlanta by representatives of the United States Government, and were stamped that they must be remitted at par; however, numerous banks disregarded this stamp and made a deduction. The bank making such deduction was corresponded with but in num-
618 bers of cases recovery could not be made, and it would have been a waste of further postage to continue writing on the subject."

7. It is stipulated that the following excerpt taken from Exhibit Z of said interrogatories under Rule 58, and forming a part of Bulletin G 161, issued by the Federal Reserve Bank of Atlanta, is the only portion of said exhibit essential to the record of said appeal, to wit:

Extract from Exhibit Z to Interrogatories.

"Every bank sending items to the Federal Reserve Bank of Atlanta, or its branches, will be understood to have agreed to the terms and conditions set forth in this bulletin, and to have thereby specifically agreed that in receiving such items this bank will act only as the collecting agent and at the risk of the bank from which the items are received; will assume no responsibility other than the diligence and care in forwarding such items; and will be authorized to send such items for payment direct to the bank on which drawn, or to another agent for collection at discretion. It is further agreed that this bank shall not be liable for the negligence or failure of any person or corporation to which such items may be sent for collection, nor shall it be liable for returns on such items until such returns have been actually converted into cash. In case of non-payment of such returns, or the loss of any items while in process of collection, or through failure to collect, or for any other reason, except failure to use due diligence, this Bank shall have the right to charge back such items to the depositing member bank. Please acknowledge receipt on the enclosed form. Respectfully, M. B. Wellborn, Governor."

8. The following tabulation made up from the Annual Report of the Superintendent of Banks in the State of Georgia was introduced in evidence as follows, to wit:

619 **Tabulation of Annual Report of Superintendent of Ban of Georgia.**

"Capital, Surplus, and Profits Stated Separately but Aggregated f Georgia Banks in the Following Classes: 1, *Members Federal R serve System;* 2, *Non-members Federal Reserve System but E igible;* 3, *Non-members Federal Reserve System Ineligible.*

Class.	No. of banks.	Capital.	Surplus.
1-*a*. National Banks	94	13,651,000	11,909.0
1-*b*. State Bank Members	51	10,131,800	7,473.8
1. Members Federal Reserve	145	23,682,800	19,382.8
2. Non-Members eligible	372	21,057,253	8,915.8
3. Non-Members ineligible	194	3,046,286	824.7
	711	47,786,340	29,122.7

	Profits.	Combined sur. & prof.
1-*a*. National Banks	4,257,000	16,166.0
1-*b*. State Bank Members	2,426,899	9,900.6
1. Members Federal Reserve	6,683,899	26,066.6
2. Non-Members eligible	7,667,954	16,583.7
3. Non-Members ineligible	936,280	1,760.4

Twenty-Four branch banks not included in number, but figures included with parent banks. National Bank statements as of Dec 29, 1920; State Banks December 15th. National Bank Statements in even thousands-odd dollars and cents excluded.

In addition to the above there were on December 31, twenty-on State banks in the hands of the State Superintendent of Banks fo liquidation, eight of them with capital less than $25,000."

620 **Tabulation of Statistics of National Banks.**

9. The following tabulation, certified as correct by the Comptroll of the Currency, setting forth certain statistics as to capital, surplus dividends and net earnings, etc. of National Banks was introduced in evidence by the defendants, the same being in words and figures as follows, to-wit:

Capital Stock, Surplus, Dividends, and Net Earnings, with the Percentage of the Net Earnings to Capital and Surplus and the Percentage of Dividends to Capital of National Banks with Capital Stock of $25,000.00.

For the Years Ended December 31, 1915, to 1919, Inclusive.

(In thousands of dollars.)

	No. of banks.	Capital stock.	Surplus.	Total dividends declared during year.	Total net earnings.	Per cent of net earnings to capital and surplus.	Per cent of dividends to capital.
1915.....	2,252	56,295	22,990	5,299	7,288	9.19	9.29
1916.....	2,075	51,735	22,762	6,161	9,254	12.42	11.91
1917.....	2,103	52,568	23,252	6,010	11,222	14.80	11.43
1918.....	2,163	54,057	25,795	6,139	11,588	14.51	11.36
1919.....	2,150	53,849	28,369	6,471	13,315	16.19	12.01

621 Similar Information for All Reporting National Banks for the Years indicated.

1918.....	7,767	1,109,735	845,282	131,583	289,899
1919.....	7,890	1,158,259	921,335	134,831	322,092

Percentage of net earnings of $25,000 banks to net earnings of all National Banks:

Percentage of dividends of $25,000 banks to dividends of all National Banks—
1918, 4.67% 1918, 4%
1919, 4.81% 1919, 4.13

Percentage of capital stock of $25,000 banks to capital stock of all National Banks,
1918, 4.87% 1919, 4.65%

622 The following tabulation of statistical information, cer-
fied as correct by the Comptroller of the Currency, set
forth the number of National Banks in the United States which
respectively closed as insolvent for each of the years from 191
1919, inclusive, and the aggregate of the capital of such insol
banks, was introduced in evidence by the defendants, the same be
in words and figures as follows, to-wit:

National Bank Failures, Years Ending October 31, 1915, *to Oct*
31, 1919, *Inclusive.*

Year.	Number of banks.	Capital stock.
1915	14#	$1,830,000.
1916	13#	805,000.
1917	7#	1,230,000.
1918	2	250,000.
1919	1##	25,000.

(#) 1915—Includes five Banks restored to solvency. 191
Includes one bank restored to solvency. (1 bank which failed
1915, restored to solvency, 1916.) 1917—Includes one bank restor
to solvency.

(##) 1919—Paid Depositors in full during the year.

10. It is stipulated that exhibit "B" to said interrogatories of de
fendants under rule 58 and introduced in evidence along with th
said interrogatories, was the document referred to in the evidenc
as the "Par List", the title page of said par list containing the follow
ing words and figures, to-wit:

623 "Federal Reserve Inter-District Collection System; Banks
Upon Which Items Will be Received by Federal Reserv
Banks for Collection and Credit. July 1, 1921. Extra copies o
this list may be obtained from the Federal Reserve Bank of you
district, Washington. Government Printing Office, 1921."

followed by a detailed compilation, alphabetically arranged by
States and indicating the commercial banks, items upon which the
Federal Reserve Banks would undertake to collect—said list show-
ing with respect to some States that items would be collected by the
Federal Reserve Banks upon all banking institutions, and with re-
spect to other States that items would be collected upon all banks
in certain towns or cities, upon all national banks in other towns
and cities, and upon all national banks and named and designated
state banks in other towns and cities. It is stipulated that the par
list so introduced in evidence was of the general tenor and effect
above set out, and that it was not necessary for an understanding
of its nature and effect that its contents be set forth in full.

11. It is further stipulated that the several sections of the evi-
dence hereinbefore specified and contained in separate printed

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mphlets, taken together with the evidence set forth herein, or ein referred to, shall constitute a complete statement of the evidence to be included in the record in said case, and the Judge allowing the appeal herein may approve this stipulation in the form following at the foot hereof, without the cessity of a hearing before him with respect thereto, and when approved and filed, the said documents herein referred to, together ith this stipulation, shall become a part of the record in said case r the purpose of said appeal. This 6 day of June, 1922. Alex W. Smith, Orville A. Park, Theodore H. Smith, Solicitors for Plaintiffs and Interveners. John W. Davis, Hollis N. Randolph, Robert S. Parker, Defendants' Solicitors.

In United States District Court.

Approval by the Judge.

(Filed June 9, 1922.)

The foregoing stipulation is hereby approved, and the documents herein referred to, together with this stipulation, shall be filed in the clerk's office and become a part of the record in said case, and, taken together, shall constitute the complete statement of the evidence to be included in the record as essential to the decision of the question presented by the appeal from the final decree in said case rendered on the 25th day of March, 1922.

625 This 6 day of June, 1922. Sam'l H. Sibley, U. S. Judge.

[File endorsement omitted.]

In United States District Court.

Opinion of the Court.

(Filed Mar. 13, 1922.)

This case was heard by me on its merits and, after argument and due consideration, I find as follows:

1. Under sections 13 and 16 of the Federal Reserve Act, the Federal Reserve Banks are empowered to accept any and all checks payable on presentation, when deposited with them for collection.

2. Checks thus received must be collected at par. The Federal Reserve Banks are not permitted to accept in payment of checks deposited with them for collection an amount less than the full face value of the checks.

3. In the discharge of its duties with respect to the collection of checks deposited with them, and with respect to performing the functions of a Clearing House, the several Federal Reserve Banks are empowered to adopt any reasonable measures designed to accomplish these purposes. To that end a Federal Reserve Bank may send checks to the drawee bank directly, for remittance through the mails, of collections without cost of exchange. If the drawee bank

refuses to remit without deduction of the cost of exchange, it is
the power of the several Federal Reserve Banks to employ
proper instrumentality or agency to collect the checks
626 the drawee bank, and it may legitimately pay the neces
cost of this service.

4. The process of the daily collection of checks, in the exercis
the clearing house functions, is not rendered unlawful becaus
the fact that of the checks handled two or more of them ma
drawn on the same bank.

5. It is a legitimate feature of the clearing house function
Federal Reserve Bank to publish a par clearance list,—that i
list of banks on which checks are drawn that will be collected
par by the Federal Reserve Banks. But inasmuch as a conclu
may be drawn from the appearance of a bank's name on the
list that it agrees to remit at par, or has agreed to enter the
clearance system, I do not think such list should include the na
of any non-member bank unless such non-member bank consen
I see no objection to including in the par clearance list the
names of towns or cities, with a representation that the Fede
Reserve Bank will undertake to collect at par checks drawn on a
bank (member or non-member) in such town or city.

6. In the inauguration of its par clearance system, I find that t
Federal Reserve Bank of the Atlanta District was not inspired
any ulterior purpose to coerce or injure any non-member bank whi
refused to remit at par. Specifically, I find that the charge th
the Federal Reserve Bank at Atlanta would accumulate check
upon country or non-member banks until they reach a larg
amount, and then cause them to be presented for payment ove
the counter, so as to compel the plaintiffs to maintain
627 much cash in their vaults as to drive them out of busines
as an alternative to agreeing to remit at par, is not sustained
by the evidence.

7. I find the evidence insufficient to sustain any charge in th
bill that the Federal Reserve Bank was acting illegally or exc
cising any right it had so as to oppress or injure the plaintiff banks
With regard to the publication of the names of non-member banks
on the Federal Reserve Bank's par list, while I do not think th
evidence justifies a finding that such publication was done to in
jure or oppress plaintiff banks, nevertheless I do not think th
names of plaintiff banks, or any of them, should be included in
the list without their consent.

The general result of my findings is, that the plaintiffs are en
titled to the writ of injunction against the inclusion of their name
on the par list without their consent, but are not entitled to an in
junction for any other matter complained against the respondents.

Let an appropriate decree be submitted giving effect to the fore
going findings.

This March 11th, 1922. Beverly D. Evans, United States Judge
Southern District of Georgia, presiding.

[File endorsement omitted.]

Decree.

IN THE

District Court of the United States for the Northern District of Georgia.

[Title omitted.]

This cause came on for final hearing on the bill of complaint and the amendments thereto, the answer of the defendants and the amendments thereto, upon papers heretofore read, and former orders and decrees made herein, upon evidence submitted in open Court by the plaintiffs and the defendants respectively, and upon argument of counsel,

Upon consideration whereof the Court being fully advised in the premises,

It is considered, ordered, adjudged and decreed, that under Sections 13 and 16 of the Federal Reserve Act, the defendant, the Federal Reserve Bank of Atlanta, is empowered to accept any and all checks payable on presentation, when deposited with it for collection, which checks, thus received, must be collected at par by the defendant, the Federal Reserve Bank of Atlanta, without deduction for so-called exchange or otherwise.

It is further considered, ordered, adjudged and decreed that the defendant, the Federal Reserve Bank of Atlanta, in discharging its duty with respect to the collection of checks deposited with it and with respect to performing the functions of a clearing house, is empowered to adopt any reasonable measure designed to accomplish these purposes, and may send such checks to the drawee bank directly for remittance through the mails without cost of exchange, and if the drawee bank refuses to remit without deduction for the cost of exchange, it is in the power of the defendant, the Federal Reserve Bank of Atlanta, to employ any proper instrumentality or agency to collect the checks from the drawee bank, and it may legitimately pay the necessary cost of this service.

It is further considered, ordered, adjudged and decreed, that in the exercise by the defendant, the Federal Reserve Bank of Atlanta, of its clearing house functions, the process of the daily collection of checks is not rendered unlawful because of the fact that of the checks handled two or more of them may be drawn on the same bank.

It is further considered, ordered, adjudged and decreed, that in the inauguration by the defendant the Federal Reserve Bank of Atlanta, of its par clearance system the said defendant bank was not inspired by any ulterior purpose to coerce or injure any non-member bank which refused to remit at par.

It is further considered, ordered, adjudged and decreed, that the defendant, the Federal Reserve Bank of Atlanta, in the inauguration of its par clearance system, did not intend to accumulate checks upon country or non-member banks until such checks reach a large

amount and then cause them to be presented for payment ove
counter, so as to compel the plaintiffs to maintain so
630 cash in their vaults as to drive them out of business,
alternative to agreeing to remit at par.

It is further considered, ordered, adjudged and decreed, tha
evidence submitted by plaintiffs is insufficient to sustain any
in the bill that the defendant, the Federal Reserve Bank of A
was acting illegally or exercising any right which it had so
oppress or injure the plaintiff banks.

It is further considered, ordered, adjudged and decreed, that
a legitimate feature of the clearing house functions of the defen
the Federal Reserve Bank of Atlanta, to publish a par clearance
that is, a list of banks checks drawn on which will be collect
par by the Federal Reserve Banks, and that in the publicatio
such lists the defendant, the Federal Reserve Bank of Atlanta,
properly enter thereon the names of towns or cities, with a re
sentation that the defendant bank will undertake to collect a
checks drawn on any bank (member or non-member) in such
or city.

It is further considered, ordered, adjudged and decreed, tha
asmuch as a conclusion may be drawn from the appearance
bank's name on a par list that it agrees to remit at par, or has ag
to enter the par clearance system, the defendant, the Federal Res
Bank of Atlanta, its officers, servants and agents, be and they
hereby enjoined and restrained from publishing, upon any
list issued or to be issued by the said defendant, the Federal Res
Bank of Atlanta, the name of any non-member bank being a pl
tiff in this cause unless such non-member bank consents or has
sented to remit at par.

631 It is further considered, ordered, adjudged and decre
that, except for the injunction granted in favor of the pl
tiffs in the preceding paragraph of this decree, said plaintiffs are
entitled to an injunction for any other matter or thing complain
of against the defendants in the bill and its amendments, and re
tive to all such matters an injunction is denied.

It is further considered, ordered, adjudged and decreed, that
taxable costs in this case be equally divided between the plaint
and the defendants.

It is further considered, ordered, adjudged and decreed, that
temporary restraining order heretofore granted in this cause is
solved.

This 25th day of March, 1922. Beverly D. Evans, United Sta
District Judge, Presiding.

Petition for Appeal.

(Filed June 9, 1922.)

In United States District Court.

The following named plaintiffs and interveners in the above state
case, to-wit: American Bank & Trust Company, et al., as listed

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stipulation of record, conceiving themselves aggrieved by the orders and decrees made and entered on the 25th of March, 1922, in the above entitled case, do hereby appeal from said orders and decrees to the United States Circuit Court of Appeals for the Fifth
632 Circuit, for the reasons specified in the Assignment of errors, which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said orders were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit. American Bank & Trust Company et al., by Alex W. Smith, Orville A. Park, Solicitors for Plaintiffs and Interveners. Smith, Hammond & Smith, Theodore H. Smith, Of Counsel. The foregoing claim of appeal is allowed.

Dated: This 6 day of June, 1922. Sam'l H. Sibley, United States Judge.

[File endorsement omitted.]

633 **Order Granting Supersedeas.**

(Filed June 9, 1922.)

In United States District Court.

The above-named plaintiffs, having presented their petition for appeal in said case, the same having been allowed by the Court, and having petitioned the Court of a supersedeas of the orders and decrees of March 25, 1922, and a continuation of the restraining order heretofore granted in said cause, pending disposition of said appeal in the Appellate Courts, and having given notice to counsel for the defendants of said application, and tendered good and sufficient bond in the amount prescribed by the Court, it is now ordered that said appeal shall operate as a supersedeas of the orders and decrees of March 25th, 1922, and the restraining order heretofore granted in said case shall remain in effect pending disposition of said appeal in the Appellate Courts, upon filing of the bond presented to the Court herewith in the penalty of $10,000.00.

The United States Fidelity & Guarantee Company, of Baltimore, Maryland, is accepted on said bond as surety, and said bond is now approved.

This 6 day of June, 1922. Sam'l H. Sibley, United States Judge.

[File endorsement omitted.]

IN CENTER

Assignment of Error.

In the District Court for the Northern District of Georgia.

In Equity.

138.

AMERICAN BANK & TRUST COMPANY et al.,

vs.

FEDERAL RESERVE BANK OF ATLANTA et al.

And now within the time provided by law come the plaintiffs and intervenors in the above stated case, "American Bank & Trust Company et al." as per stipulations of record, by their solicitors, and say that the final decree in said cause, entered on March 25th, 1922, is erroneous, and against the just rights of complainants and intervenors for the following reasons:

1. Because the court interpreted the provisions of Sections 13 and 16 of the Federal Reserve Act as authorizing the Federal Reserve Bank of Atlanta to accept any and all checks payable on presentation, when deposited with it for collection, and requiring it to collect same without deduction for so-called exchange or otherwise, instead of holding that under the provisions of said Sections 13 and 16 of the Federal Reserve Act the Federal Reserve Banks, including the Federal Reserve Bank of Atlanta were, and are, not authorized to accept or receive for collection or otherwise any check on any non-member bank that does not, at the time any such check is deposited with the Federal Reserve Bank of Atlanta, maintain with such Federal Reserve Bank a balance sufficient to offset the items in transit held for its account by the Federal Reserve Bank, and that has not agreed, and does not continue to agree, to remit the proceeds of any such check without charge for such remittance of the proceeds thereof, whether such charge be made under the description of exchange or otherwise.

2. Because the court decreed that having received a check or checks drawn on a non-member bank that refuses to remit at par, the Federal Reserve Bank of Atlanta is authorized under the law to collect the same through proper channels and pay the expenses of such collection, but under no circumstances can it pay any charge designated as exchange; instead of holding that the provisions of section thirteen of the Federal Reserve Act prohibiting exchange charges against Federal Reserve Banks are limited to banks that are either members, or clearance members, of the Federal Reserve Banks, from and for account of which alone the Federal Reserve Banks are authorized to receive and collect checks, and that said prohibition

was intended by the Congress to forbid the Federal Reserve Ban
incur any expense in the collection of checks whether by way o
change or otherwise.

3. Because the court erred in holding and decreeing that in
inauguration by defendant, the Federal Reserve Bank of Atlanta
its par clearance system, said defendant bank was not inspired
any ulterior purpose to coerce or injure any non-member bank w
refused to remit at par.

Said decree is erroneous in that:

(*a*) The evidence discloses that the par clearance system
inaugurated by the Federal Reserve Board, and not by the defend
Reserve Bank, the avowed purpose being to make it operat
throughout the whole Federal Reserve System of twelve Federal
serve Banks covering in their respective districts the whole terri
of the United States under a common and uniform policy prom
gated by the Federal Reserve Board.

(*b*) Under the evidence the defendant Reserve Bank stated
writing its purpose to adopt methods of collection of checks dr
on non-member banks that refused to remit at par that would
embarrassing, annoying and expensive to such non-member ba
unless such non-member banks would agree to remit at par, and t
threat was duplicated in a form letter addressed by registered mai
one thousand and fifty of such non-member banks, including pl
tiffs and intervenors, in the Sixth Federal Reserve District. Coe
intent is implicit in said threats, and defendants seek to justif
under the provisions of the law. Actual execution of these thr
was in process until stopped after the restraining order was serve
said case. Injury to such non-member banks is likewise implied
such threats and fully proven in the evidence, said injury being
basis of the coercion.

4. Because the court erred in holding and decreeing that t
defendant, the Federal Reserve Bank of Atlanta, in the inaugu
tion of its par clearance system did not intend to accumulate chec
upon country or non-member banks until such checks reach a lar
amount and then cause them to be presented for payment over t
counter, so as to compel the plaintiffs to maintain so much cash
their vaults as to drive them out of business as an alternative
agreeing to remit at par.

Said decree is erroneous in that:

The evidence discloses that defendants threatened to, and di
place the names of sundry non-member banks, plaintiffs herein, o
without their consent, on the so-called par lists circulated to
members and clearance member banks in the Federal Reserve Sy
tem throughout the United States, and that the necessary and aut
matic result of such publication and distribution of said par lists w
to divert to, and accumulate in, the hands of defendants practicall
all checks drawn on such non-member banks that circulated outsi

their respective towns and cities; that when so diverted from their customary channels and concentrated in the hands of defendants for collection, embarrassing, annoying and expensive methods of collection would be employed, chief among which was to be their presentation for payment over the counters of the banks upon which drawn in cash only; that the necessary result of such processes would compel plaintiffs to maintain cash reserves in their vaults to an extent that would make the alternative of remitting at par the lesser of two evils; that such methods constitute warfare on plaintiffs within the meaning of the decision of the Supreme Court in this case rendered May 16, 1921; and the law assumes that the necessary result of defendants' conduct was intended.

5. Because the court erred in holding and decreeing that the evidence submitted by plaintiffs is insufficient to sustain any charge in the bill that the defendant, the Federal Reserve Board of Atlanta, was acting illegally or exercising any right which it had so as to oppress or injure the plaintiff banks.

Said decree is erroneous in that:

(*a*) Plaintiffs were entitled to have all the evidence in the case and the admissions of the answers of defendants considered in connection with the conclusion and finding in the final decree of the court now excepted to, and not alone the evidence submitted by plaintiffs.

(*b*) The evidence submitted by the plaintiffs alone fully sustains the charges in the bill.

(*c*) The evidence as a whole, and the admissions of defendants' answers, demanded a finding that defendants were acting illegally in receiving and undertaking to collect any check on plaintiffs because they are non-members of the Federal Reserve System and none of them ever created or maintained with the Federal Reserve Bank of Atlanta a balance sufficient to offset the items in transit held for their account by said Federal Reserve Bank of Atlanta, and none of them had agreed to remit at par.

(*d*) The evidence in said case shows that plaintiff banks would be injured by the exercise of the rights claimed by defendants under either alternative presented, viz. 1st, by diminution of earning power and dislocation of ordinary banking reserves involved in maintaining cash in vault to meet all current checks; or 2nd, by the loss of all revenues derived from the service of remitting the proceeds of such checks from the bank on which drawn to the place of business of the holders entitled thereto.

(*e*) Every substantial and material allegation of the bill as amended is either admitted or proven by the preponderance of the evidence in said case.

6. Because the court erred in holding and decreeing that the Federal Reserve Bank of Atlanta may properly enter on the par

lists the names of towns or cities with no other qualification tha representation that the defendant bank will undertake to coll par checks drawn on any bank in such town or city whether a m ber or a non-member of the Federal Reserve System.

Said decree is erroneous in that:

(*a*) Such a representation is misleading and amounts to u competition in the banking business because it solicits the se to it of checks on non-member banks in any such town or city have not agreed to remit at par and have not created and m tained balances with defendant bank required by law, by re whereof such checks so solicited cannot be lawfully handle defendant bank.

(*b*) In any town in which is located only one bank, and bank one that refuses to remit at par and which is a non-mem and non-depositing bank in the Federal Reserve Bank of Atl the publication of the name of the town is equivalent to the p cation of the name of the bank, and under the evidence such lication would be designed for the sole purpose of acquiring po sion of checks on such non-member bank to be used in the clearance campaign in the embarrassing, annoying and expen methods of collection charged in the bill and shown by the evid to constitute the most effective weapons available to the Fed Reserve Banks throughout the system in putting into effect uni par clearance in banks that do not agree to remit at par.

(*c*) The conclusion may be drawn as clearly from the publica of the name of a town or city as from the publication of the nam names of the one or more banks constituting all the banks in s town or city, that such bank or banks have agreed to remit at p or have agreed to enter the par clearance system of the Fed Reserve Banks. Universal par clearance, *ex vi termini*, includes banks, and when, if ever, accomplished the par lists become *func officio*. While in progress the publication of territorial divis represented by towns, cities, states, or districts, necessarily imp that all banks within such designated territory are a part of t clearance system. Hence if the publication of the specific na of a bank that has not agreed to enter the system is wrongful, t publication of the territory in which such bank is located is a wrongful as to it.

7. Because the court erred in not granting an injunction as pra for in all the prayers of the bill as amended.

8. Because the court erred in refusing to allow the follow intervention in said case:

Intervening Petition.

Now come the Brookings State Bank of Brookings, Oregon, Far ers State Bank, Clyman, Wisconsin, Bank of Frankville, Frankvill Wisconsin, Bank of Tupelo, Tupelo, Mississippi Farmers & Me

chants Bank, Monroe, North Carolina, Allen State Bank, Allen Michigan, Farmers & Merchants Bank of Catlettsburg, Kentucky, who file this petition of intervention and pray to be made parties plaintiff in the above stated case as amended by the amendment of the plaintiffs therein of January 11, 1922, and adopt the allegations of said original bill and in the amendment thereto, in so far as applicable to intervenors.

Intervenors say that they are interested in and affected by the prosecution of the par clearance campaign in the Sixth Federal Reserve District, because the addition of the non-par and non assenting banks in that district increases the number of banks in position to receive in regular course of business checks drawn on intervenors' banks and thereby swell the number of checks assembled in the hands of the Federal Reserve Bank of the respective districts of intervenors that will be presented for payment in cash over the counters of intervenors in case they persist in refusing to remit at par.

Intervenors are not members of the Federal Reserve System and are each operating under their respective state charters and have declined to accede to the demands of the Federal Reserve System to remit cash items at par and insist upon their lawful right to charge exchange at prevailing rates for the services rendered in making such remittances.

Wherefore, intervenors pray that they may be made parties plaintiff in the above stated case.

ALEXANDER W. SMITH,
ORVILLE A. PARK,
Intervenors' Solicitors.

The above and foregoing intervention being tendered, upon consideration thereof, it is ordered that leave to intervene be refused and denied.

This 11th day of January, 1922.

BEVERLY D. EVANS,
Judge.

Said intervention should have been allowed for the following reasons:

During the trial an amendment to the bill was allowed, as appears of record, broadening the scope of the bill so as to apply to the par clearance campaign in the Sixth Federal Reserve District, not only, but in all of the twelve districts constituting the Federal Reserve System in the United States. Under the allegations of this amendment, each and every bank, whether within or without the Federal Reserve System, or whether within or without any given Federal Reserve District, is affected by the progress and activities of the par clearance campaign wherever carried on. All banks outside of the Federal Reserve System are directly interested in preventing the depletion of their ranks because it decreases their power to resist the effect on their business of the par clearance methods employed against them. All banks inside the system, whether by choice or under compulsion, are interested in preventing the increase of the

ranks of the outsiders because thereby the reciprocal benefits to [illegible] of par clearance are diminished. All Federal Reserve Banks [illegible] interested in putting in par clearance everywhere because it rel[illegible] them of the extra cost of making collections out of the usual [illegible] ing channels, and each of the twelve is linked to all the o[illegible] through the medium of the Federal Reserve Board, and the [illegible] settlement fund. Under the allegations of this amendment [illegible] banks named in said rejected intervention, all of whom are on[illegible] the Sixth Federal Reserve District were entitled to be made par[illegible] plaintiff in said case, as prayed, and the court erred in refusing [illegible] allow their intervention for that purpose.

9. Because the court erred in admitting in evidence the ans[illegible] of defendants to questions propounded to them under Equity R[illegible] 58, when tendered in evidence by the defendants, said questions [illegible] ing numbered from 1 to 316 inclusive, over the objection of pl[illegible] tiffs that said answers were joint and not several, and that u[illegible] said Rule 58, each of the defendants should have answered eac[illegible] said questions separately, and fully, in writing, under oath, and [illegible] answers of each defendant separately should have been signed [illegible] filed by him.

10. Because the court erred in ruling out the evidence of Geo[illegible] D. Wood tendered and sworn as a witness for plaintiffs. He testi[illegible] that his home was in Brookings, Oregon; that for twelve years [illegible] had been connected with the Brookings State Bank, a non-mem[illegible] of the Federal Reserve System; that he was familiar with bank[illegible] methods as to collecting and remitting proceeds of checks. The f[illegible] lowing question was propounded to him by plaintiffs' solicitor:

"Q. State whether or not you have ever had any experience [illegible] connection with unusual, out of the ordinary, expensive, annoy[illegible] and embarrassing methods of collection?"

This question was ruled out on objection of defendants' coun[illegible] that expert evidence was inadmissible to explain the meaning [illegible] embarrassing, annoying and expensive methods of collection, a[illegible] plaintiffs excepted.

Said witness would have sworn as hereinafter stated.

The following questions were propounded to said witness by pl[illegible] tiffs' solicitor, to-wit:

"Q. Have you had any controversy or fight with the Federal R[illegible] serve Bank in the twelfth district, or any of its branches, with reg[illegible] to remittance for checks at par?

"A. I have.

"Q. What, if any, measures have been adopted by that bank [illegible] compel you to agree to remit at par?"

This question was ruled out by the court and witness not pe[illegible] mitted to answer, on the objection of defendants' counsel that th[illegible] question called for proof of *res inter alios acta*, and that defendan[illegible] Reserve Bank of Atlanta should not be prejudiced by any act th[illegible]

Federal Reserve Bank of San Francisco might have done, and plaintiffs excepted.

If permitted to answer the witness would have testified in substance as follows:

Unusual methods of the collection of cash items upon a bank that declines to remit at par the proceeds, without any charge for exchange, embrace such things as assembling together a large number of checks and presenting the same over the counter of the bank on which they are drawn for payment in currency, accompanied by the refusal to accept anything in payment but currency; that among such methods of collection, out of the ordinary, there have been the return of checks drawn on such bank, even before presentation, with notice of dishonor, and that that notice, instead of being sent to the endorser of the check from whom it was received by the Federal Reserve Bank, was duplicated and sent to the payee, or to the drawer of the check, being the depositor of the drawee bank; that among other such methods, actually experienced by this witness, in the unusual methods of collection against non-par remitting banks has been the return of the check before presentation for payment to the bank upon which it was drawn, and that on the check was the notation that the bank was closed and out of business, and the check returned with that notation on it; that among other embarrassing, annoying and expensive methods employed against a State bank, has been the stationing of an agent in the town where the State bank is located, who ostentatiously takes the checks of that bank to the counter, and takes the currency and counts it in the presence of the customers of the bank, and who undertakes to create the impression that the bank is in financial difficulties, thereby greatly discouraging and frightening the customers; that all of these methods have been employed against this particular witness' bank by the representatives of the Federal Reserve Bank of San Francisco who offered to abandon and withdraw them all if the witness' bank would agree to remit the proceeds of cash items without exchange, and make that agreement indefinite and continuous.

The foregoing evidence was tendered and rejected after the amendment of January 11th was allowed and before the intervention including the Brookings State bank was disallowed.

Plaintiffs insists that the rejection of said evidence was error for the following reasons:

(*a*) The Federal Reserve System consists of twelve Federal Reserve Banks and their branches, under the general supervision and regulation of the Federal Reserve Board.

(*b*) The evidence then before the court disclosed that the policy of establishing universal par clearance was promulgated by the Federal Reserve Board under the assumed duty of inaugurating a system of universal par clearance, and this policy was imposed upon the twelve Federal Reserve Banks by the Federal Reserve Board, and the details of carrying it out left to them. The campaign had for its ultimate object universal par clearance throughout the United States, and this object was to be attained progressively and as rapidly

as possible. Lines of least resistance were to be followed, and campaign began in the first district through the Federal Res Bank of Boston, and proceeded through the other districts to a p where the Sixth District remained for action. Intensive effo the Sixth District followed a recent conference of Federal Res Agents and Governors of all the Federal Reserve Banks recited in action of the Directors of the Federal Reserve Bank of Atlanta December 11th, 1919. Pursuant to said action of the Directors nouncement to non-member and non-par banks in that district issued that "the time has now arrived, when, in justice to the s member banks of the Federal Reserve System, and the non-mem banks who maintain clearing accounts with the various Federal R serve Banks together with the 16,196 non-member banks who remitting at par we must, in compliance with the intent of the F eral Reserve Act begin receiving on deposit, at par, checks and dr payable on presentation drawn on any bank in the United St whether a member of the Federal Reserve System or not. This include the checks and drafts drawn upon your bank, and the pose of this letter is to ask you that you join the vast army of remittance banks by advising us it will be agreeable, for us to clude your name in the next issue of our par list, and that you remit to us at par for items drawn upon you. While, as stated, Federal Reserve Act does not permit us to pay exchange for remittance for bank checks and drafts payable upon presentation, can incur any cost that is necessary in order to carry out the poses of the Act, and we would very much regret to be forced adopt other methods of collection that would prove embarrass annoying and expensive to you."

(c) Plaintiffs insist that they had a right to assume that the barrassing, annoying and expensive methods of collection to be ployed against them under this announcement and its enclosu would be the same as had been employed by other Federal Reser Banks in other districts in prosecuting the common campaign for accomplishment of the common purpose of putting into eff throughout the United States so-called universal par clearance, af conferences among them all with respect thereto, progress in wh to the extent of 16,196 non-member banks was officially appro by the Federal Reserve Board and so announced to plaintiffs a given as the excuse for, and explanation of, the inauguration of s methods of collection in the Sixth District. Conceiving such me ods to be illegal and oppressive, the bill was filed in the case at b and injunction sought.

(d) It further appeared from the evidence before the court wh said rejected evidence was offered that plaintiffs had been official notified by defendant Reserve Bank, prior to filing the bill, th "the twelve Federal Reserve Banks are uniting in their efforts bring about the establishment of a national par list, and rapid stride are now being made in that direction," and that "the action of th various Federal Reserve Banks in extending their par lists has m with the cordial approval of the Federal Reserve Board."

(e) In this state of the proof, and under the allegations of the pleadings, evidence of the methods employed by any one of the twelve Federal Reserve Banks for the establishment of a condition that necessarily involved all of them,—acting under a policy dictated by the Federal Reserve Board to all of them, followed by conferences among all of them with respect to the establishment of said policy, and their activities in prosecuting the campaign being cordially approved by the Federal Reserve Board—is admissible to show a common intent to accomplish a common object, in the prosecution of which the acts of one member of the combination become the acts of all.

(f) Proof of the actual performance of other Federal Reserve Banks in connection with the common project was admissible to explain the intent of the defendant Reserve Bank in threatening to adopt other methods of collection that would prove embarrassing, annoying, and expensive to plaintiffs.

II. Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of *res inter alios acta* and therefore irrelevant, and said objection sustained and said evidence ruled out. The objection to these and all other interrogatories and documentary evidence hereinafter referred to went to the competency of the evidence as a whole, and no technical objections were interposed.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

Ernest Meek and *Charles Rous*, Catlettsburg, Ky., cashier and assistant cashier of Farmers & Merchants Bank of Catlettsburg, since its incorporation in September, 1916, and in the capacity of Cashier and Vice-President since that time (answering separately).

Said bank is a state bank, organized under the State Banking laws of the Commonwealth of Kentucky and is not a member of the Federal Reserve system. It has never signed any agreements with the Federal Reserve Bank of Cleveland or any other Reserve Bank. Said Farmers & Merchants Bank has never consented to have its name placed upon the par list of the Federal Reserve Banks and particularly of the Federal Reserve Bank at Cleveland. It is located in the Fourth Federal Reserve District. Said bank has been accustomed to keep its reserve accounts in its correspondents' banks in Cincinnati, to-wit: The Fifth National Bank and the Third National Bank and in its correspondent bank in New York City, The Hanover National Bank. It has been accustomed to receive two and one-fourth (2¼) per cent interest on the daily balance in said Reserve accounts.

Prior to the attempted inauguration of universal par clearance by the Federal Reserve Bank, the usual course of dealing in remitting

for checks owned outside of Catlettsburg and presented for p
ment, was to clear at par all checks that came to us through
correspondent banks. The other checks that came to us fr
various other banks were cleared through the usual banking c
nels and exchange charges made thereon. That is, we gave t
banks a draft upon our correspondent for the amount of the ch
presented by these banks, less the exchange charges, which wer
a rule, 10 cents per $100, where the amount was considerable
reduced the charge to .08 cents per $100. We term this an exch
charge. It covers postage, stationery, clerical hire, accounting, bo
keeping, incident to the labor of forwarding the funds paid at
bank to the payee of the check. The custom of charging exch
has been in force with this particular bank, since its organizat
your deponent has been engaged in the banking business in t
locality for thirty (30) years and such exchange charges have be
customarily made during all of that time by every bank, w
business was known to your deponent. The Federal Reserve B
of Cleveland inaugurated its campaign about Jan. 1, 1920 to hav
banks in said Reserve Dist., whether members of the system or
remit for checks drawn upon them without any deduction for
change.

It first sought to obtain the consent of the non-member ba
Farmers & Merchants Bank of Catlettsburg, by correspondence, set
forth the merits of par clearance as the said Reserve Bank saw th
and later it sent its agents and representatives in person to expou
and explain the merits to said Farmers & Merchants Bank
finally it sent its agents, who threatened to use means of collect
all the checks upon the Farmers & Merchants Bank in cash over
counter. The Farmers & Merchant Bank still declined to en
into an agreement to clear checks at par. Then the said Reser
Bank collected all checks upon the Farmers & Merchants Ba
in cash over its counter through the agency of the American Ex
way Express Company. The Express Company ceased to han
these checks for collection and the defendant appointed a lo
agent, resident in Catlettsburg and through said local age
presented all checks that came into its hands, drawn upon t
Farmers & Merchants Bank and demanded cash in payment over
counter. The Farmers & Merchants Bank, in order to protect
self against the Reserve Bank in its effort to exhaust the cash fr
its vault, stenciled all blank checks furnished its depositors, with t
endorsement, "Payable in cash or exchange draft at the option
the Farmers & Merchants Bank of Catlettsburg." On all chec
presented by the Reserve Bank, which bore this endorsement t
Farmers & Merchants Bank gave an exchange draft upon
Cincinnati Reserve in payment therefor. This exchange draft
its Cincinnati correspondent was to all intents and purposes the sa
as cash to the said Reserve Bank, except that it did not accomplis
the said Reserve Bank's purpose of reducing the cash in the vau
of the Farmers & Merchants Bank. The Reserve Bank continu
to present checks and demand cash in payment over the counte
for one year and six months and during that time took in ex

from the Farmers & Merchants Bank, a sum equal to its total deposits or about one-half million dollars.

Copy of correspondence filed. Meek Exhibit Nos. 1 and 2.

After receipt by me of letter of Dec. 23, 1919, Meek exhibit #1, instead of out of town checks, or checks owned outside of Catlettsburg and drawn on the Farmers & Merchants Bank coming through the regular channels from the various banks owning said checks and from our regular correspondent banks, these out of town checks were all accumulated and collected by the Federal Reserve Bank, with the exception of a very few, which continued to come through our correspondent banks, and were sent beginning January, 1920, to the American Railway Express Company for presentation and payment in cash over the counter.

Copy of written instructions to the Express Company attached as Meek Exhibit No. 3.

The Federal Reserve Bank of Cleveland the latter part of Dec., 1919, sent this authorized representative, M. C. Magee, to solicit my agreement to par clearance. M. C. Magee first came to Catlettsburg, in December, 1919 and attempted to persuade your deponent, the Cashier of the Farmers & Merchants Bank to agree to clear checks at par. Failing in his efforts to obtain such an agreement, he then made a demand, as a matter of right that the Farmers & Merchants Bank consent to clear checks at par. This demand being refused him he then threatened to injure and destroy the business and business reputation of the Farmers & Merchants Bank and stated that they would put the Farmers & Merchants Bank on their par list, obtain possession of all of its out of town checks, present such checks at its counter and demand of it payment in cash therefor. And he stated that no bank on earth could stand such a method of collection. He gave out at drug stores, at the Postoffice, at the Express Office, that he was a government agent, a Federal Reserve Man and left the impression with the citizens of the small town of Catlettsburg that he occupied a place of authority with the United States Government. He then inquired of the clerks on the United states postoffice, local express office and in the drug stores and mercantile stores about town of and concerning the business reputation and financial standing the Farmers & Merchants Bank, of its officers and employees and left the impression among the citizens of the town that the Farmers & Merchants Bank was in financial distress and that he, as a representative of the Federal Reserve Bank, was at Catlettsburg for the purpose of protecting the interests of said Reserve Bank.

The said Magee created scenes and disturbances in my bank in connection with the collection and presentation of the items held by the Federal Reserve Bank of Cleveland and sought or made an opportunity almost every time a depositor came into the lobby of my bank, of creating or starting a disturbance with the very evident purpose of leaving an impression with such depositor that would be unfavorable and injurious to my bank's credit.

While the Federal Reserve Bank of Cleveland was taking
average of from Three to Sixteen Thousand ($3,000.00-$16,00
dollars in cash daily from my bank in payment of the item
sented by it, yet by reason of the endorsement, "Payable in
or exchange draft at the option of the Farmers & Merchants
of Catlettsburg," we were able to protect ourselves to a consid
extent by giving the Reserve Bank a draft upon our correspo
bank in payment of such items as were so endorsed. In ord
further drain our cash, Mr. Magee went among our depositors
attempted to persuade them that checks so endorsed by us wer
negotiable and when circulated over the country were very
jurious to the maker's credit and he suggested to our depo
that they demand of us that we remove this endorsement from
checks and suggested to our depositors that we were injuring
depositor's credit by the method under which we were doing
ness and that in the event we refused to take this endorse
from our checks that they had better do their banking business
a different bank. As a result of Mr. Magee's statements, a num
of our depositors took their accounts to our only competitor,
Kentucky National Bank of Catlettsburg and our business
suffering severely. We were not able to lend much cash, by
son of the demands of the Federal Reserve was making upon
His actions required us to maintain a very excessive cash re
in our vaults as we were having no way of knowing what dema
would be made on us from day to day and at the same time we ha
maintain reserves with our correspondent banks for the same rea
Our situation became known to the community at large and
vestigation was made by a Grand Jury of Boyd County and ind
ments returned against M. C. Magee for circulating statem
derogatory to my bank, which is made a penal offense by
Statute of Kentucky.

Meek Exhibit #1. Copy of Indictment.

Magee has never been within the State of Kentucky since
indictment to our knowledge.

Trial has never been had upon said indictment because he
not to our knowledge been within the jurisdiction of the Stat
Kentucky since the said indictment. No other agent was sen
Catlettsburg after Magee's departure and local agent, Mary
McCall, continued to present and collect checks.

Miss McCall presented all checks sent by the Cincinnati bra
of the Federal Reserve Bank of Cleveland and presented the s
daily at our counter and demanded cash in payment thereof. S
checks as bore the endorsement above named were paid in exchan
draft. Few checks were presented by her that bore this endor
ment because at this time the said Reserve Bank had struck up
the idea of returning to the payee of said check all checks so
dorsed or stenciled and writing to said payee a personal letter o
the head of every endorser upon said checks and explaining to t
payee that said checks were not a negotiable instrument, was b
banking method, illegally drawn and injurious to the credit of t

maker thereof, and for these reasons it was not acceptable to the Federal Reserve Bank and they declined to handle it. These letters had a very demoralizing effect upon the business of my bank because they were sent to my depositors by the payee and in many cases the checks had been paid through the usual channels by us before that depositor came with his letter of complaint. Often the payee would write a personal letter to our depositor and suggest and urge him to require us to remove such endorsement, or suggest to him in the event we refused to remove it, that he change his banking house. Miss McCall came to my bank equipped with a go-cart, in which to place currency and cash collected by her in payment of the checks accumulated. She carried sacks, in which to place the currency and coin and seals and blank papers. She assorted and listed her cash in the lobby of my bank and placed it in these paper bags and carried it from the bank in the go-cart in plain view of my bank's depositors and of the citizens of the community, which had every injurious effect upon the credit of my bank that a "run" upon it would have had. Approximately the average ranges of currency collected by said McCall, daily from my bank were from one hundred to Sixteen Thousand ($100.00-$16,000.00) dollars in one year and six months about a half million dollars. When said payments of currency were made to said McCall, she counted the money, assorted it into denominations, listed it in the lobby of my bank, where the patrons of my bank could plainly see what she was doing. This attracted the attention of my depositors and customers and induced speculations and inquiries on their part as to the unusual procedure that was going on. About sixty-five or Sixty ($65-$60) dollars a month was paid to her in salary and daily expense was involved for postage and registering checks to Catlettsburg, and of expressing currency to Cincinnati, furnishing bags, etc., incidentally. Said McCall, Magee and Express Company each refused to accept draft in payment of items upon which they claimed to be entitled to demand cash although we offered to make the draft in full for the face value of the items without deducting exchange of any kind. The Federal Reserve Bank of Cleveland, has a branch Reserve Bank at Cincinnati. I attach copy of the letter dated February 26th, 1920, addressed to Ernest Meek, Vice President and Cashier of the Farmers & Merchants Bank, and signed by H. F. Straiter, Assistant Cashier of the Federal Reserve Bank of Cleveland, notifying me of the appointment of Magee as agent to collect checks. Meek Exhibit #5. By reason of the methods I have described, seeking to compel me to sign the par clearance agreement, we have lost in exchange at least eight or nine hundred ($800-$900) dollars a year. We have lost a number of depositors, who moved their accounts by reason of the campaign by the Federal Reserve Bank of Cleveland. We have lost earnings on loans by reason of the necessity for keeping an excessive amount of cash in our vaults to meet the daily cash items presented by the Federal Reserve Bank of Cleveland and we have been injured in our reputation and standing as a banking institution.

By reason of the endorsement we placed on our blank ch
furnished to our customers, our customers have been embarr
and annoyed and their credit injured through practice of the F
eral Reserve Bank of Cleveland of returning the check to the
endorser and writing a "follow-up letter" to the payee as we
above set out. In order to obtain a channel for my bank's ch
the Federal Reserve Bank of Cleveland at first accepted the ch
bearing this endorsement and took a draft in payment for t
After it began to receive a volume of these checks and had m
channel to itself for the accumulation of them, it then began its
paign of returning the checks to the last endorser, writing the
low-up letter" to the payee explaining why they had declined
check. After the restraining order, filed in July, 1921 sto
the Federal Reserve Bank of Cleveland from presenting item
our counter and demanding cash in payment thereof, it attache
small slip of explanation, a copy of which is attached hereto
marked "Meek Exhibit No. 6." Upon which it wrote the follo
explanation. "Court order filed restraining presentation". T
was given for the purpose of explaining why it returned the ch
instead of collecting it and their explanation was misleading
was variously construed by the different banks into whose hand
came and by its customers to mean that the funds of the ma
were attached or in the hands of the court and in some instanc
was construed that my bank had failed. On account of the s
we have lost a great many depositors that we know of by re
of inquiry and a great many that we do not know of. Such ne
ods did naturally require us to carry a double reserve cash on ha
and reserve with correspondent. It has reduced our earnings
the matter of interest on loans. During the period that the Fe
Reserve Bank of Cleveland was demanding cash on items,
volume of checks presented for payment in cash over our cou
was increased by one-half million dollars or in other words, la
amount demanded by the Federal Reserve Bank. Under the
method, we could with reasonable certainty, determine the aver
daily amount of cash that would be required to pay checks
our counter. We could not, with any certainty, determine
average amount of cash required for payment of checks over
counter, after the inauguration of the methods I have hereinbe
described. The effect of placing the name of my bank on the
list of the Reserve Bank of Cleveland, it was a notice to e
Federal Reserve Bank, that every check drawn on my bank w
be collected by the Federal Reserve Bank of Cleveland, free of
and for that reason practically all of my out of town checks w
sent by the various Federal Reserve Banks throughout the Un
States to the Cincinnati branch of the Federal Reserve Bank
Cleveland and collected together and forwarded to Catlettsburg
presented at my counter.

For data see Meek Exhibit No. 7.

Kentucky was colorsd as a universal par clearance state.

This was not true as to the Farmers & Merchants Bank. T
endorsement on our checks was as follows: "Payable in cash or

COPY BOUND CLOSE IN

nge draft at the option of the Farmers & Merchants Bank of lettsburg, Kentucky." The Reserve Bank accepted all these cks for collection and accepted our exchange draft upon our cor- ondent in payment for them. Later they refused to accept these cks for collection and resorted to the methods we have above de- led in the use of the "follow-up letter" to obtain the co-operation our depositors in their campaign to remove such endorsement n our checks.

Cross-examination:

Farmers and Merchants Bank.

earnings for 1918	$12,630.16
earnings for 1919	13,255.63
earnings for 1920	14,064.51
idend for 1918	$5,000.00
idend for 1919	5,500.00
idend for 1920	6,000.00

During these three years this bank carried balances with Hanover ional Bank, New York City, Fifth-Third National Bank, Cincin- i, Ohio, First National Bank, Cincinnati, Ohio.

Practically all items were cleared through our correspondent, th-Third National Bank of Cincinnati. All items were credited us at par, they in turn collected for us without exchange charge. y paid us interest at rate of 2¼ per cent. per annum on daily ance in reserve fund. This arrangement was not in writing. e only correspondence affecting it is filed herewith as "Meek Ex- it A". All items were credited as per after receiving letter filed exhibit. The Farmers and Merchants Bank of Catlettsburg, ntucky, during these years deducted "exchange" on all checks t did not clear through Hanover National Bank, New York, th-Third National Bank, Cincinnati, Ashland National Bank, hland, Ky., Huntington National Bank, Huntington, West Vir- ia, Paintsville National Bank, Paintsville, Ky., Bank of Joseph- , Prestonsburg, Ky., Federal Reserve Banks on all items ayable to the United States Government, also any other bank ring checks payable to the United States Government. Our "ex- nge" account is and has always been kept under one heading.

After refusing to sign par clearance agreement submitted to me M. C. Megee, he stated to me that no bank could exist that re- ed to sign the agreement. Later my attention was called to his ons and solicitations through calls he made upon my customers depositors by my depositors, they were complaining of his ons so I, at my own instance, took the matter up with the prose- ing attorney of our district who had these depositors subpoenaed ore the next Grand Jury for Boyd County, Kentucky. I was also bpenaed and the Grand Jury later returned an indictment against C. Megee for violating the Statute of Kentucky relative to ulating false rumors derogatory to a bank. No one suggested

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the indictment returned against Megee to my knowledge. T
action I took was taken upon my own action at the suggesti
the preservation of my bank's business and that of my deposit

I answered direct Int. #26 from my own knowledge.

I answered direct Int. #38 from facts within my own know

I have gone over these questions and discussed my answers
my attorneys. The answers are mine and upon facts within
own knowledge. All of my answers are my own and from
within my own knowledge. The Phrasing of the sentenc
largely the work of my attorneys, Martin & Smith, of Catlett
Ky., with whom I have conferred in framing the language
answers.

I read over all of the interrogatories both direct and cross,—
preparing my answers, in fact, I read them several times and
carefully.

12.

The following document was returned with and made a pa
said interrogatories, and was tendered in evidence by plaintiffs
objected to by defendants on the same ground taken as to th
terrogatories, and said objection was sustained by the court and
evidence rejected, and plaintiffs excepted and assigned error o
ruling for the same reasons set forth in the foregoing assignme
error number ten.

MEEK EXHIBIT NO. 1.

Federal Reserve Bank of Cleveland.

Dec. 23, 19

Mr. E. Meek, Vice-President,
Farmers & Merchants Bank,
Catlettsburg, Kentucky.

DEAR SIR:

The approaching New Year offers you an opportunity to s
in perfecting the check collection system in the Fourth Federal
serve District. During the year which is rapidly drawing to a c
arrangements have been made for the collection of checks o
of the banks in that part of the States of Pennsylvania and W
Virginia located in this district, as well as checks on all banks
Ohio and all banks in that portion of Kentucky located in t
district with the exception of eight banks, of which number
bank is one.

The banks in Kentucky have always shown an active interes
their Federal Reserve Bank and have co-operated most generou
with us during the trying times of the war. There still rema
however, one service which you can perform to assist in perfec
the usefulness of the Federal Reserve Bank.

It would be a source of much gratification to you to know t
checks on all Kentucky banks in the Fourth Federal Reserve Dis

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are collectible at par through the Federal Reserve Banks. All that remains for you to do is to sign the agreement to accept your checks from our Cincinnati Branch and remit to them at par upon receipt.

Will you consent to do this and permit us to have the very great pleasure of announcing to all of the banks in the United States that this District may henceforth be considered entirely par with respect to bank checks?

With most cordial wishes for your success and prosperity in the New Year, I remain,

Very truly yours,

H. F. STRATER,
Asst. Cashier.

13.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

MEEK EXHIBIT NO. 2.

Par Check Collection Facilities.

Feb. 24, 1920.

To all banks and trust companies in the Fourth Federal Reserve District:

Of the 29,690 banks in the United States, 26,525 are now on the par list of the Federal Reserve Banks. Six Federal Reserve Districts out of twelve are now all par. This means that checks drawn on ninety per cent of the total number of banks and bankers throughout the entire United States can now be collected through the Federal Reserve Banks without deductions for exchange. During the months of January 892 banks were added to the par list, leaving only 3,165 banks which have not agreed to remit for checks drawn upon them at their face value. There is every indication that within the next few months checks payable anywhere in the United States will be collectible at par.

The enclosed outlined map of the United States shows graphically the states which are all par.

Very truly yours,

H. G. DAVIS,
Cashier.

14.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and

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objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and evidence rejected, and plaintiffs excepted and assign error on ruling for the same reasons set forth in the foregoing assignment error number ten.

MEEK EXHIBIT No. 3.

Agent —— ——:

Below please find copy of Article No. 8, General Traffic Circ No. 10, showing how these collections should be handled. Pl be governed accordingly.

8. *Collections from Federal Reserve Banks.*

The Federal Reserve Banks forward by Express, checks for lection drawn on banks at smaller cities and require that the shall be secured and remitted instead of using money orders checks for that purpose, which is the usual custom. The envel for such collections will bear special instructions reading as follo

"Payment of this Collection must be obtained in cash and mitted in cash; if received within banking hours, presentation remittance must be made on date of receipt; if received after ing hours, or on holidays, presentation and remittance must made the next succeeding business day."

There will also accompany these collections a letter of advice taining a list of the checks enclosed, with authority in the that payment is refused on any of them, to deliver to a Not Public who will be named, taking his receipt therefor, which must be returned to the shipper.

These special instructions accompanying collections from the Fe eral Rese Bank must be complied with.

The c ections must be charged for in accordance with offi express classification.

Endorsement of Federal Reserve Bank on checks will read, "P to the order of American Railway Express Co., or any Notary Pub for collection," therefore checks turned over to Notaries should be endorsed by Agents of this Company.

When checks are paid by bank, mark them "Paid."

AMERICAN RAILWAY EXPRESS COMPANY,

By —— ——,

Agent."

Agents should keep a record of any checks turned over Notaries.

15.

The following document was returned with and made a part said interrogatories, and was tendered in evidence by plaintiffs a

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objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

MEEK EXHIBIT NO. 4.

Boyd Circuit Court.

THE COMMONWEALTH OF KENTUCKY

against

M. C. MAGEE.

Indictment.

The Grand Jury of Boyd County, in the name and by the authority of the Commonwealth of Kentucky, accuse M. C. Magee of the crime of willfully and maliciously making, circulating and transmitting to other persons false statements, rumors, and suggestions by word of mouth which was directly and by inference derogatory to the financial condition and affecting the solvency of a bank doing business in this state, committed as follows: The defendant, M. C. Magee on the 27th day of April, 1920, in the County and Circuit aforesaid, did unlawfully willfully and maliciously make, circulate and transmit to H. Gardner and Frank Carpenter, C. C. Mangann and other persons to the Grand Jury unknown false statements, rumors, suggestion by word of mouth which directly and by inference were derogatory to the financial condition and affected the financial standing of the Farmers & Merchants Bank, a banking institution, duly created, organized and doing business in Catlettsburg, Boyd County, Kentucky under and pursuant to the laws of the State of Kentucky, in this, that the said M. C. Magee willfully and maliciously said to Frank Carpenter, a member of the D. H. Carpenter Co., a customer and depositor of said bank, in substance, "You don't want to ruin your credit by fixing the stamp on your checks" referring to checks drawn by the said D. H. Carpenter Co. upon said bank and which check was then in possession for presentation for payment by the said M. C. Magee, and referring to the manner of doing business by said bank; and that the said M. C. Magee willfully and maliciously said to H. Gardner then agent of the Standard Oil Co, a customer and depositor of said bank that a draft drawn by said Gardner and the said Standard Oil Co upon said bank for the payment of money was about to be protested for non-payment by said bank and which draft was then in possession of the said M. C. Magee for presentation to said bank for payment; that said statements so made to the said Frank Carpenter and H. Gardner as aforesaid were false and untrue and were willfully and maliciously made by the said M. C. Magee for the purpose

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of injuring and destroying the financial condition solvency financial standing of said bank.

Against the peace and dignity of the Commonwealth of Kentu

JOHN F. COLDIRON,

Commonwealth's Attorney, 20th Judicial Distric

16.

Because the court erred in rejecting the evidence of the wit hereinafter named taken upon written interrogatories duly exec and returned into court, said evidence having been duly tendered the trial and objected to by defendants on the ground that it proof of res inter alios acta and therefore irrelevant, and said ob tion sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible the reasons set forth in the tenth assignment of error, which brevity of record are hereby referred to and incorporated in this ception. A statement of the evidence so rejected is as follows:

H. Flood Madison, Bastrop, Louisiana, Practicing law and ban ing. My connection with the Bastrop State Bank began in Ja 1900, at which time I was elected President; and I have held th position ever since. The Bastrop State Bank was organized in 18 or 1891; and it has achieved a fair degree of success for a coun bank; and has generally paid a fair annual dividend on its capi stock. The Federal Reserve Bank of Dallas, Texas has used eve conceivable effort to obtain the consent of the Bastrop State Ba to remit cash items at par; and not only that it has adopted eve conceivable means to force the accomplishment of that res When during the year 1919 the Federal Reserve Bank of Dall Texas undertook to put in force its par clearance system in th portion of Louisiana within the Eleventh Federal Reserve Distr it sent its Special Agents to interview the State banks in that p tion of the State to induce them to sign a par clearance agreeme and one or more of such Special Agents called on the Bastrop St Bank for the purpose stated. The Bastrop State Bank could n see its way clear to sign the par clearance agreement; and, the ne gotiations to do so having failed, the Federal Reserve Bank of Dall undertook by various methods to coerce it to sign the agreeme sent Special Agents here to interview the customers of the Bastr State Bank; and threatened to locate a Special Agent here to coll all cash items which it received on that Bank in cash across counter; and on at least two occasions held such cash items un they amounted in the aggregate to more than double the cash re serve which the Bastrop State Bank under the laws of Louisia was required to have on hand in its safe or vault and then pr sented these items across the counter of the Bank for payment cash; and on one occasion at least the Federal Reserve Bank Dallas sent circular letters to a great many of the customers of th Bastrop State Bank; and finally the Federal Reserve Bank of Dall sent all of its cash items on the Bastrop State Bank for collectio only in cash, through the American Railway Express Co.; and it

today endeavoring to collect its items in the same manner in utter disregard of the laws of this State on the subject.

The "Instructions to Agents" in the collection letter in which such cash items are sent through the American Railway Express Company appeal to me as being very harsh in their terms—in any event they are self-explanatory; and I attach one of such original collection letters as a part of my answer to this question—marked Exhibit 1 for identification; and for a convenience of reference I take the liberty of quoting the first three paragraphs of the "Instructions to Agents" on the reverse side of this letter:

"(1) Payment of this collection must be obtained in cash and remitted in cash. If received within banking hours, present immediately for payment all items to bank on which drawn and make remittance therefor on same date. If received after banking hours, or on holidays, items must be presented to bank on which drawn and remittance must be made the next succeeding business day.

"(2) Do not hold, under any circumstances, for convenience of paying bank.

"(3) Items are payable in cash over the counter of the bank on which drawn and, under no circumstances, must the collecting agent accept bank's draft for the items in settlement. You are instructed to accept only lawful money for the United States or national bank notes, currency or coin in payment of items presented."

Finally, I take the liberty of attaching as a part of my answer to this question a copy of a letter written by me on March 9, 1920, to Honorable Jos. E. Ransdell, U. S. Senator from this State—the copy being marked Exhibit 2 for identification; and every statement of fact contained in that letter is true.

The Bastrop State Bank does derive a revenue from exchange on remittance covering cash items; and that revenue is just as important to the continued success of the Bank as any of its other revenues.

I desire to state in this connection that the balance of trade is against the country banks in the matter of handling cash items; and unless the country banks receive some exchange for handling such items that branch of their business proves a burden instead of a benefit. By way of illustration, the customers of the Bastrop State Bank receive practically no checks, relatively speaking, on the city banks—whereas the customers of the city banks, such as wholesalers, receive a great many checks on the Bastrop State Bank; and if the latter Bank handles such items at par there is no reciprocal or compensating service which the city banks can render in return; and thus if the country banks are forced to remit at par they render an important service to the city banks and the wholesalers without any compensating or reciprocal service.

By way of further illustration, the customers of the Bastrop State Bank receive practically no checks or drafts on the banks or dealers in Dallas, Texas—probably not as many as twenty-five items a year all told, even if any at all; whereas under the par clearance system

which the Federal Reserve Bank of Dallas is trying to enforce a
Bank would receive a large per cent of the cash items drawn on
Bastrop State Bank by its customers; and hence while the Ba
Bank would call on the Federal Reserve Bank of Dallas for p
tically no service in this connection the Federal Reserve Bank wo
call on the Bastrop State Bank for a great deal of service—relativ
speaking; and the Federal Reserve Bank would receive all of
benefits and the Bastrop State Bank none of the benefits from
an arrangement.

The name of the Bastrop State Bank was placed on the par
of the Federal Reserve Bank of Dallas, Texas; and this was d
not only without the consent but over the serious protest of
Bastrop State Bank.

In explanation I will state that during the negotiations betwe
the two banks on the question of par clearance the Federal Rese
Bank wired the Bastrop State Bank on September 9, 1919, as f
lows:

"Answering wire even date we do not favor proposition s
mitted."

In reply the Federal Reserve Bank wired the Bastrop State Ba
under date of Sept. 13, 1919, as follows:

"Referring to your wire tenth not optional as to placing yo
name on par list; and we shall begin receiving all items on you
few days. Therefore necessary immediate arrangements be effec
for remittance at par by mail—otherwise shall have to collect
items over your counter in cash. Other banks now acquiescing a
par facilities will be complete and universal no banks excepted. C
you not likewise cooperate and avoid payment in cash? Answ
collect."

In further explanation on this point I refer to my answer to i
terrogatory No. 4; and I will add in the same connection that t
Federal Reserve Bank of Dallas has made good its threat to coll
or try to collect all of the cash items received by it across the coun
of the Bastrop State Bank in cash using the American Railway E
press Company as a means of making such collection.

The Federal Reserve Bank persists in these methods in spite
and in defiance of the law of Louisiana authorizing State banks
charge a reasonable exchange,—one-tenth of one per cent, on ca
items; and in utter violation of the rights of those customers of t
Bastrop State Bank who cross-stamp their checks as follows:

"This check is not payable through any postoffice, express co
pany or Federal Reserve Bank."

That is to say while the Federal Reserve Bank admits that c
customers have the legal right to so cross stamp their checks; a
that it has no legal right to collect the checks so cross-stamped, st
that Bank continues to handle such checks and to have them pr
sented across the counter of the Bastrop State Bank for payme

in cash; and then when the Bastrop State Bank declines to pay such checks to the American Railway Express Company that Company, at the instance of the Federal Reserve Bank, stamps them as follows:

"This item presented for payment to bank on which drawn and payment refused."

Agent American Railway Express Co."

The agent of the Company then returns such checks to the Federal Reserve Bank; and that Bank returns them to the source from which it received them with the "Notice of Dishonor" attached and send each drawer and each endorser a like "Notice of Dishonor." The patent purpose of all this is to dissatisfy our customers; and the Federal Reserve Bank does all of this in connection with checks which admittedly it has no legal right to handle—no legal right to collect; I mention this fact as an incident of the extreme methods which the Federal Reserve Bank has adopted in its par clearance campaign.

There was a very marked difference in the number of checks presented through the Federal Reserve Bank of Dallas prior to the time it placed the Bastrop State Bank on its par list and subsequent to that time. In fact the checks presented by the Federal Reserve Bank prior to that time were altogether negligible both in number and amount; but subsequent to that time the checks presented through the Federal Reserve Bank represented a very large per cent of the checks drawn on the Bastrop State Bank; of course I refer to checks commonly designated as cash items representing the remittance made by our customers to the trade and not to such checks as were cashed across the counter in the ordinary conduct of our business or deposited by our customers for credit.

The whole point is that if the Federal Reserve Bank did not carry the Bastrop State Bank on its par list the former Bank would receive practically no checks, cash items, on the latter Bank—the quantity would be altogether too negligible for controversy or serious consideration; a fact which was clearly demonstrated by the course of the business between the two banks prior to the time that the Federal Reserve Bank placed the Bastrop State Bank on its par list. What has been said on this point does not relate to checks given in payment of the obligations due the Government or any of its branches—the Bastrop State Bank at all times remitted such checks at par.

The method of collecting checks by the Federal Reserve Bank and its agents drawn on the Bastrop State Bank did in at least two instances involve an accumulation of checks; and while I am unable to state the exact period of time they were accumulated, I know that it was several days; I refer to my letter to Senator Ransdell, Exhibit I, and to my answer to interrogatory No. 1 in further explanation of my answer to this interrogatory.

The aggregate amount of checks thus accumulated in the two instances above mentioned when presented for payment in cash across the counter of the Bastrop State Bank was more than double the

377

amount of the cash reserve which that Bank was required to carry in its safe or vault under the laws of the State of Louisiana.

The general course of business of the Bastrop State Bank is normally not through Dallas, Texas. In fact, the volume of business normally through that City is absolutely negligible. The normal course of business of the Bastrop State Bank is through New Orleans, Monroe, St. Louis and New York. The merchants of Bastrop buy their stock largely in St. Louis, New York and New Orleans with the exception of groceries which are bought largely in Monroe, Louisiana. In other words, the current of our trade is chiefly North and South.

To divert the business of the Bastrop State Bank through Dallas, Texas, would entail on that Bank unwarranted delays in realizing on such checks and drafts as it may receive in the ordinary course of its business—especially so under the rules promulgated by the Federal Reserve Bank. The Bastrop State Bank receives drafts chiefly on Monroe, Louisiana and New Orleans and occasionally on Shreveport, Louisiana, and Pine Bluff, Arkansas, and lumber drafts largely on St. Louis; and such drafts are subject to credit with the Bastrop State Bank's correspondents in St. Louis, Monroe and New Orleans at the day received—the items on Shreveport and Pine Bluff are cleared through the Bastrop State Bank's correspondent in Monroe and on St. Louis and New Orleans through the correspondents in those cities.

If these items had to be cleared through Dallas, Texas, it would be several days before the funds would be available for the use of the Bastrop State Bank—if cleared through the Federal Reserve Bank.

Again, a great inconvenience and considerable delay would result in having such funds as the Bastrop State Bank might have in the Federal Reserve Bank of Dallas transferred to the regular correspondents of the former Bank; and, considering the trade territory of the customers of the Bastrop State Bank, funds in a bank in Dallas would not successfully meet the demands of the Bastrop State Bank—such funds to be conveniently available to that Bank would have to be transferred to its regular correspondents.

The whole scheme is impracticable from the standpoint of the Bastrop State Bank and other banks in this section of Louisiana unless the currents of trade are shifted and the course of dealing for over fifty years is reversed.

There has been no change in the method of collecting cash items on my bank, since the decision of the Supreme Court in the above stated case.

The passage of the law in this State, Act 175 of 1920, authorizing State Banks to charge reasonable exchange, not exceeding one-tenth of one per cent, on cash items and prohibiting the protest of such items where payment is offered less such exchange and the law, Act 23 of 1920, prohibiting the accumulation of checks for the purpose of injuring the drawee bank have had a very material effect upon the collection of cash items on the Bastrop State Bank through the Federal Reserve Bank; because the Bastrop State Bank has availed itself of the provisions of these laws.

The result is that the checks, cash items, now presented for col-

lection by the Federal Reserve Bank of Dallas through the American Railway Express Company are negligible both in number and amount as compared to the checks so presented prior to the passage of these laws.

The accumulation of checks has been effectively prevented; and the checks, both in number and amount, now presented through the Federal Reserve Bank have been greatly reduced.

But in spite of and in defiance of these laws, the Federal Reserve Bank of Dallas still continues to receive for collection cash items drawn on the Bastrop State Bank and to send such items for collection through the American Railway Express Company; and notwithstanding the fact that the Bastrop State Bank offers to pay all such items, where the drawers have funds to their credit, in cash, less the rate of exchange allowed by law, the Agent of the American Railway Express Company, declines to accept such payment and stamps all such checks as follows:

"This item presented for payment to the Bank on which drawn and payment refused.

_____

Agent American Railway Express Co."

Then the items are returned to the Federal Reserve Bank of Dallas; and that Bank stamps a notice of non-payment on them, and they send to each drawer and endorser a "Notice of Dishonor" which is misleading in effect and in fact notwithstanding that under Act 175 of 1920 above cited such checks are not protestable under the facts stated and no notice of any sort is required under the law of this State; I attach as a part of my answer to this question an original "Notice of Dishonor" like that mentioned marked Exhibit 3 for identification.

The Federal Reserve Bank, acting through the Agent of the American Railway Express Company, thus persists in doing a vain thing day after day, week after week and month after month—even though the quantity of checks handled is negligible as above stated; and if there is any other purpose subserved by this course than to annoy and harrass the Bastrop State Bank and to annoy and discredit the customers of that Bank I fail to appreciate what that purpose is.

The present status of the contest between the Bastrop State Bank and the Federal Reserve Bank is substantially as outlined in my answers to previous questions—especially my answer to interrogatory No. 14. That Bank is still sending such cash items as it receives on the Bastrop State Bank through the American Railway Express Company for collection; and the Bastrop State Bank pays those items which the law provides shall be paid at par; and offers to pay all other items, where the drawers have funds to their credit, less the exchange charge allowed by law. But the Agent of the American Railway Express Company, acting on the advices of the Federal Reserve Bank, refuses to accept payment under the law; and returns the items. Then notwithstanding the "Notice of Dishonor" sent out by the Federal Reserve Bank and the other methods

adopted by the Bank, fully ninety-nine per cent. of these items ultimately presented to the Bastrop State Bank for payment thr regular banking channels—it is exceedingly rare for one of t to be returned to the drawer; and so all the Federal Reserve B accomplishes by its methods is to annoy our customers by ma them the "Notice of Dishonor" above mentioned.

There is another important fact in connection with this co to which I wish to call attention: The Bastrop State Bank c to clear all cash items sent it direct by the Federal Reserve B just as it does for all other banks for an exchange charge of tenth of one per cent — whereas according to the published r rates of the American Railway Express Company, and the state of the local Agent of that Company, it costs the Federal Res Bank Four Dollars and thirty-three cents ($4.33) per Thous Dollars ($1,000.00) for collecting money through that Com as against One Dollar ($1.00) per Thousand Dollars charged the Bastrop State Bank. That is if a collection letter sent by Federal Reserve Bank through the American Railway Exp Company contains cash items on the Bastrop State Bank amount to One Thousand Dollars, or more; and those items are paid the Bastrop State Bank and the money remitted to the Federal serve Bank by the American Railway Express Company the cha amount to Four dollars and thirty-five cents per Thousand Dol and thus the Federal Reserve Bank is willing to pay the Amer Railway Express Company on collections handled by that Com containing items aggregating One Thousand Dollars or over than four times the amount it would have to pay the Bastrop S Bank for the same service; and the latter Bank would remit in change on St. Louis or New Orleans at the option of the Fed Reserve Bank.

Prior to the campaign of the Federal Reserve Bank of Dallas enforce its par clearance system in this section of Louisiana, customers of the Bastrop State Bank made no complaint what of that Bank's method of doing business; and the only complai now result from the unwarranted methods adopted by the Fede Reserve Bank. In other words, relations between the Bastrop S Bank and its customers are, in the very nature of things, cord and their interests and sympathies are mutual; and I may add t with very few exceptions indeed have all stood by the Bastrop S Bank loyally in the par clearance fight waged on that Bank by Federal Reserve Bank of Dallas—even though in some instances methods of the Federal Reserve Bank have caused them considera annoyance if not embarrassment—especially that Bank's method sending "Notice of Dishonor" which are not warranted either law or in fact or in good conscience; a poll of the customers of t Bastrop State Bank would demonstrate that at least ninety-nine cent of them are in sympathy with that Bank in the contest wa against it by the Federal Reserve Bank of Dallas.

No benefit whatever, not even to the extent of a penny, has result to the people at large in this territory or to the customers of t Bastrop State Bank from the collection of checks at par by the Fe

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al Reserve Bank; All of the benefits, if any, have inured to the benefit of "Big Business"—the city banks and the city wholesalers or jobbers.

There has been no reduction of commodity prices as a result of par clearance.

If any saving in expenses of collecting cash items has been produced by the country banks remitting for same at par such saving, or benefit has inured to the benefit of the city banks and wholesalers or jobbers; The country banks and their customers have not, within my appreciation of the facts, been benefited to the extent of a penny; but on the contrary, the country banks have sustained substantial losses.

I had no actual experience with "deferred credits" within the purview of the practice of the Federal Reserve Banks; but as that question has been explained to me by other bankers including the agents of the Federal Reserve Bank it means that the Federal Reserve Banks divide their districts into zones; and that "credits" on cash items deposited with such banks for collection is "deferred" for the average period of time which it requires for the Federal Reserve Banks to realize—to receive the money—on such items on the banks within any given zone; the time of such "deferred credit" being dependent on the distance from the bank on which any given item is drawn to the Federal Reserve Bank in which such item is deposited. By way of illustration, my recollection of the different conversations I had with the agents of the Federal Reserve Bank on this subject is that if the Bastrop State Bank should send its cash items to the Federal Reserve Bank of Dallas for collection it would get credit for those items in from three to five days from the date in which they are received by the Federal Reserve Bank. The period of "deferred credit" being from three to five days according to the distance between the banks on which such items were drawn and Dallas.

The result of the system is, within my appreciation of the facts, to maintain an average of at least three days of the country's business, cash items, in the "deferred credit class"—suspended credits—in the language of the street "up in the air."

If the theoretical par clearance system of the Federal Reserve Banks was universally operative, a holder of a check in one city, drawn on a bank in another and a distant country town, could not cash the same at par on presentation without any charge or deduction. There would be a charge for interest for the expense and time incident to the collection of the check. In actual practice, I have had no experience with "deferred credits" or "interest on the float" under those specific terms; but all collection charges and expenses have always been included by the Bastrop State Bank under the term "exchange;" and, within my appreciation of the facts, that is the universal custom among country bankers. But, according to my understanding of the matter, "deferred credits," "interest on the float" and "exchange" are in practical application synonymous terms—they all represent a collection charge.

In the very nature of things, the net result to the holder of a check is the same whether expense of collection is charged as "in-

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terest on the float" or as "exchange." It costs the holder someth to collect a check—to realize the spot cash on it; and it is perfe immaterial to him as to how the charge is designated—the desig tion being all a matter of taste or practice.

There is, within my appreciation of the facts, no division of change between the correspondent banks; and I know there is such division as between the Bastrop State Bank and its corresp ents. In other words, all collection charges, by whatever na designated, made by the city correspondents of the Bastrop S Bank are retained by such correspondents; and all collection char made to the Bastrop State Bank retained by the Bank and carr on its book under an account designated "Exchange."

If there were no specific division of the cash deductions for change, the country bank would carry with the city bank a depo which compensates the latter bank for the services rendered in t connection.

This city bank receives its compensation from the deposit wh the country bank carries with it; and even where the city bank pa the country bank interest on such deposits the per cent is nomin compared to the rate which the city bank receives in lending t deposit to its customers. There is not ordinarily, judging from t own experience, a minimum deposit, average daily deposit, requi by the city bank; but if the deposit is not maintained at such average as will compensate the city bank it usually notifies t country bank promptly of that fact; and the arrangement is ter nated or renewed on a compensating basis to the city bank. T city bank takes no loss on the transaction.

Under the practice of deducting from checks upon which cash immediate credit is desired when presented to city bank for c lection, on a distant drawee bank covering interest for the time volved in transmitting and receiving proceeds, there is no divis between the city bank and the country bank, drawee bank; a unless the city bank and the country bank, drawee bank deduct reasonable exchange charge, it receives nothing for handling su transaction.

The concrete result in the aggregate, as between the city ba and the country banks, of the attempted change from the syste making and dividing exchange charges to the system of deducti to cover interest on the float as regards the revenues of the two cla of banks, with respect to such cash items, would be a loss to t country banks, and the result would undoubtedly be that the c banks would be the beneficiaries of the alleged savings under t facts stated, except to such extent, if any, as the city banks ma allow their customers to share in the benefits of such savings.

In other words, all of the savings would be taken from the coun banks and given to the city banks or to the city wholesalers or j bers; and the result would be a substantial loss to the country ban with no corresponding benefits in any direction; and the city ban would at the same time remain the beneficiaries of the deposits c ried with them by the country banks.

I have been president of the Bastrop State Bank since June 19

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ad during that time have taken an active interest in its affairs and
s policies; and have always kept in close touch with its source of
evenues, interest and exchange; and generally speaking all of its
xchange arrangements or agreements have been made by me in
erson or under my direction, supervision and advice. Besides, I
ave discussed such matters with them on numerous occasions ever
ince I became President of the Bastrop State Bank; and especially
ince the fight inaugurated by the Federal Reserve Bank against
he country banks to enforce them to join its par clearance system.

A whole book could be written on the unwarranted methods
dopted by the Federal Reserve Bank of Dallas, Texas to force the
ountry banks in that portion of Louisiana within the Eleventh Fed-
ral Reserve District to acquiesce in the par clearance system which
hat Bank has undertaken to enforce; and then the story would not
e half told.

Based both on experience and observation, I state without hesita-
ion, and without any fear whatever of successful contradiction, that
he Federal Reserve Bank of Dallas, Texas has not hesitated to use
"Big Stick" methods in its efforts to force the country banks into
s par clearance system; and today it is following up those methods
n utter disregard of the laws passed by the Legislature of this State
or the protection of the State banks.

Again, the Federal Reserve Bank seemed not to hesitate at any
xpense to accomplish its purpose—even though it claims a great
aving for its par clearance system: Today that bank is willing to
ay the American Railway Express Company $4.33 per $1,000 for
ransporting money from Bastrop, Louisiana to Dallas, Texas
whereas the Bastrop State Bank offers to render that same service
y remitting the money in New York, St. Louis or New Orleans
xchange for $1.00 per $1,000.00.

Then, too, the Federal Reserve Bank seems not to hesitate to spend
ny amount of money in spreading its propaganida in support of its
ar clearance system; but, on the other hand, the country banks are
nable to do this—they have not the great facilities of the Govern-
ent and its unlimited resources to back them up in presenting their
ide of the question to the public.

The result has been to estrange the two banking systems of the
ountry—to create a strong antagonism between them; Whereas
hey should go hand in hand in financing and upbuilding the whole
ountry just as they did during the World War.

In this connection, I trust that it is not amiss for me to state that
during the World War the four country banks of this Parish fi-
anced War Securities for more than eight times the aggregate
mount of their capital stock—all through the Federal Reserve Bank
of Dallas, Texas; and during that time that Bank seems to think
ell of the country banks—they were helping it make a big record
or itself.

But as soon as the War was over the Federal Reserve Bank of
Dallas inaugurated a war of its own—a par clearance war—on the
ountry banks; and has waged that war continuously and relent-
lessly ever since. Thus the spirit of co-operation is gone; and the

IN CENTER

country banks are forced to look upon the Federal Reserve Bank their enemies—forced by the methods of that Bank.

But still the Federal Reserve Bank advertises to the world practically all the country banks have joined the par clearance tem; as if they had done so willingly—when as a matter of they have generally done so under duress. They were afraid join. And why? Because everybody knows that the reputation a bank is as delicate as a flower; and as the slightest frost blights flower so the slightest suspicion blights the reputation of a bank

Then, this being true, it is easy to appreciate how a country in a country town where everybody knows everybody's busin would hesitate to take the risk of having a Special Agent of Federal Reserve Bank, "Special Agent of a Government Bank," walk into its bank building and present from $1,000.00 to $ 000.00, or more, worth of cash items across its counter for payme *only in cash*; and to pay this Special Agent that amount and to h him parade through town with it to the Express Company and s it to the Federal Reserve Bank of Dallas. This is exactly what h pened to the country banks in that portion of Louisiana within Eleventh Federal Reserve District who declined to acquiesce in par clearance system which the Federal Reserve Bank of Dal undertook to enforce.

The Bastrop State Bank paid across its counter in cash under system of collection and prior to the enactment of the laws tioned in Interrogatory No. 14, over a quarter of a million dollars the payments having been made to the Agent of the American R way Express Company collecting for the Federal Reserve Bank made at least one payment for over $20,000.00.

But a very large majority of the State banks were afraid to s this course—were afraid of the effect on their depositors and effect on the public generally.

Then, too, it should be borne in mind that this par clearance s tem was initiated by the Federal Reserve Bank only after the Wo War—after the country banks had supported it loyally in financ that war—a service which they cheerfully and heartily render and during all that time they never heard of a par clearance syst

Then in response to the appeals of the country banks at the warranted treatment accorded them by the Federal Reserve Bank Dallas there was only one answer—that of Shylock: "It is so no nated in the bond."

Cross-examination:

The gross profits of the Bastrop State Bank for the year 19 were $19,753.16; and the net profits for the same year were $ 616.83. The gross profits of that Bank for the year 1919 w $25,537.03; and the net profits for the same year were $7,983 The gross profits of that bank for the year 1920 were $27,699.0 and the net profits for the same year were $15,968.13.

In explanation I will state that while these earnings, especia for the years 1919 and 1920, are above the average under norm conditions, still they are in a sense negligible when compared w

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the earnings of the Federal Reserve Bank: President Harding of the Federal Reserve Board testified before th Committee on Rules, House of Representatives, in May 1920 that "last year the net earnings were around $90,000,000.00; and when asked what per cent that was on his capitalization he replied: "I think about 109 per cent."

Therefore the average net earnings of the Bastrop State Bank for the three years were approximately ninety per cent less than the earnings of Federal Reserve Bank for the year 1919.

The Bastrop State Bank paid a ten per cent dividend for the year 1918, a fifteen per cent dividend for the year 1919 and a ten per cent dividend for the year 1920.

The Bastrop State Bank during 1918, 1919, and 1920, carried all its receipts from regular collection items and exchange in one item on its books—an account designated as exchange.

The passage of the law referred to in direct interrogatory No. 14 was through the efforts of the Louisiana Bankers' Association supported by the State banks throughout the State. The law is embodied in two Acts—No. 23 and No. 175 of the Acts of the General Assembly of the State of Louisiana of 1920.

The purpose of the first Act No. 23 of 1920 was to prevent the accumulation of checks in the manner which had been practiced by the Federal Reserve Bank of Dallas in some sections of the State—that portion within the Eleventh Federal Reserve District and to protect the State banks against such methods.

The purpose of the second Act No. 175 of 1920, was

(*a*) To legalize a reasonable exchange charge, not exceeding one-tenth of one per cent on "cash items;" and

(*b*) To prevent the protest of such cash items when the drawee bank offered to pay them less the exchange charge authorized by the Act.

The Bastrop State Bank has four City correspondents: Hanover National Bank, New York; First National Bank, St. Louis; Central Savings Bank & Trust Company, Monroe, Louisiana; and Whitney Central National Bank, New Orleans, La.

The Hanover National Bank gives us credit at par only for checks on the City of New York; and such checks are the only items we send that Bank.

The First National Bank of St. Louis gives me credit at par on all checks on St. Louis; and on other items that Bank gives credit at par but charges "interest on the float;" and the same rule obtains with the Central Savings Bank & Trust Company of Monroe and the Whitney Central National Bank of New Orleans.

Three of our correspondent banks are national banks and the other- belong to the Federal Reserve System; and so they all operate their business now under the rules enforced by the Federal Reserve Banks.

But prior to the adoption of that rule we had a much more favorable arrangement in that our city correspondents gave us immediate

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credit, without any charge for "interest on the float," but gave immediate credit for all items on their par list; and they furnish us a list of their par points.

Hence the net result is that we lose the amount charged to us "interest on the float" whereas formerly on all of the par p of our correspondents no such charge was made against it.

We deduct "exchange" before remitting to the Whitney Ce National Bank for checks drawn by our depositors on us w are sent us by that Bank; but we do not deduct exchange on items sent us by our other correspondents; They enforce the r of the Federal Reserve Bank against us.

The result of the whole matter is that we have to pay "int on the float" to all of our correspondents and we lose the exch formerly deducted from the items sent us by all of our corresp ents except the Whitney Central National Bank; a substantial l us with no corresponding benefits in any direction and a substa gain to our city correspondents without the imposition of any a tional burdens or service whatever on them.

17.

The following document was returned with and made a par said interrogatories, and was tendered in evidence by plaintiffs objected to by defendants on the same ground taken as to the terrogatories, and said objection was sustained by the court and evidence rejected, and plaintiffs excepted and assign error on ruling for the same reasons set forth in the foregoing assignmen error number ten.

March 9, 192

Hon. Joseph E. Ransdell,
U. S. Senate,
Washington, D. C.

DEAR SENATOR RANSDELL:

This will acknowledge receipt of your esteemed favor of the 2 ultimo containing copy of Senate Document Number 184; and regret that pressing professional engagements have prevented from replying sooner.

Naturally, as you can appreciate from our past correspondenc read the Report with an unusual degree of interest; but I may that I was not interested in Governor Harding's academic discus of the question under consideration. However, I am vitally int ested in the concrete proposition as the same applies to this Ba in so far as the administration of the law and the regulation of Federal Reserve Board by the Federal Reserve Bank of Dallas concerned; and I feel constrained to say that the treatment accor this Bank by the Federal Reserve Bank of Dallas, Texas, in administration of these laws and regulations, is at utter varia with the expressions of Governor Harding to the effect that

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Federal Reserve Banks have not adopted coercive methods in their efforts to compel all banks to par their items.

I may say further that it seems perfectly clear to me that Governor Harding is not fully advised in the premises; because if he were it would be difficult to harmonize some of his contentions with the actual concrete facts as applied to this and other banks in this section of the State. The methods adopted by the Federal Reserve Bank of Dallas in its efforts to compel this Bank to handle all of the items of that Bank at par have been set out at some length in the correspondence heretofore had between us; but a brief summary will I trust not be amiss at this time and you can then draw your own conclusions as to whether or not those methods are coercive.

Without any attempt to be exact as to the dates, and reverting to the fact that the letters and telegrams that passed between this Bank and the Federal Reserve Bank would be the best evidence to their contents, the facts are substantially as follows:

We received several communications from the Federal Reserve Bank of Dallas relative to parring its items; and finally the matter was called to my attention by our Cashier and I wrote that Bank that we did not feel warranted in acceding to its demands—especially until we were more fully advised; and in reply to this letter we received a telegram, which, to my mind, was very peremptory in its terms, to the effect that we had no choice in the matter—that our name had already been published on the par list of that Bank; and that on a fixed date it would receive collections on us from whatever source offered and that we would have to remit at par; and that otherwise other methods of collection would be adopted.

We still declined to accede to the demands of that Bank and pretty soon we noticed that we were not receiving the daily volume of checks usually drawn on us; and, anticipating that the Federal Reserve Bank was accumulating checks aggregating a large amount with the view of having them presented across our counter for payment in cash through the Express Company or its Special Agent or some other channel, we supplied ourselves with more than double the amount of currency which we were required under the laws of this State to carry in our vault.

The situation continued for more than five or ten days; and one day while I was engaged at Court in Monroe our Cashier telephoned me that a Special Agent of the Federal Reserve Bank was here with checks aggregating a very large amount; and I told the Cashier that I would be home that afternoon and requested him to ask the Special Agent to hold matters in abeyance until my arrival.

In addition to the large amount of currency we already had on hand, I obtained from our Monroe Correspondent a considerable amount and left for home in an automobile—arriving here about two P. M.; and on my arrival at the Bank I met this Special Agent; and he had explained his business and gave me the aggregate amount of the checks he had for collection. I informed him that we had anticipated just such a move and told him that we were ready to pay the checks; and he then said that he had no desire to embarrass

IN CENTER

us and would accept exchange instead of the currency if we preferred to give it to him; and as it was towards the end of the week and, as we had to provide for the usual week end pay rolls of our customers, we gave him exchange at par and retained the currency for that purpose.

I think it entirely fair to say that prior to my arrival home the Special Agent had stated to our Cashier when advised that we had ample currency on hand to pay the checks he brought with him that he did not desire to embarrass us; and that he was prefectly willing to accept the exchange at par for the aggregate amount of the checks.

In other words, the Special Agent stated in substance that as that was his first visit to us he was perfectly willing to accept exchange for the amount of the checks he presented for collection—that such had always been his custom on his first visit to any bank, that is to say the idea he conveyed to me was that as that was our first offense, so to speak, he was inclined to be entirely indulgent and had no thought of embarrassing us on that trip.

But in response to my inquiry he made it perfectly clear, unequivocally clear, that when checks drawn on us were presented across our counter in future currency and not exchange would be exacted; and that has been the policy pursued by the Federal Reserve Bank ever since.

I will add in conclusion on this point that the aggregate amount of checks presented by the Special Agent was more than double the cash reserve which the law of this State requires us to have on hand in our safe or vault on the day he presented the checks for collection.

Thereafter the Federal Reserve Bank began sending all of its collections through the Express Company; and on one occasion those checks were permitted to accumulate until the aggregate amount exceeded double the cash reserve we were required to have on hand the day the checks were presented by the Express Agent for collection in cash across our counter.

But fortunately we had anticipated this action and had ample funds on hand to pay all of the checks so presented.

The Federal Reserve Bank has continued to collect checks through the Express Company ever since—notwithstanding that that method costs practically double the amount of the exchange charged by us—to be exact we charge $1.00 per $1,000.00, whereas the Express Company charges $1.83 per $1,000.00.

Thereafter many of our customers in sympathy with our interests and rights in the matter began stamping their checks as follows:

"This check is not payable through any post office Express Co. or Federal Reserve Bank."

And we submitted the question of the effect and legality of such checks, so stamped, to the Legal Department of the American Bankers' Association; and Judge Thomas E. Paton, General Counsel of that Association, gave us an opinion to the effect that the provisions of the stamp were legal and enforcible and that the stamp did not destroy the negotiability of the checks.

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The Counsel for the Federal Reserve Bank admitted the correctness of the first proposition; but contended that the stamp did render the checks non-negotiable; and naturally I felt safe in abiding the opinion of such an eminent authority on banking law as Judge Paton.

Then, as a counter move, the Federal Reserve Bank directed the local Agent of the American Railway Express Company to place the following stamp on all checks which we declined to pay to the Express Company because of the above stamp placed thereon by our depositors:

"This item presented for payment to bank on which drawn. Payment in cash at its full face value has been refused. The item is returned for that reason."

(Signed) ——— ———,

Agent American Railway Express Co."

We protested against the statement in this stamp that—"Payment in cash at its full face value has been refused;" and requested the local Agent of the Express Company to state the facts, if he stated anything, and to say that we had declined to pay the check at all because of the stamp placed thereon by the drawer.

It is perfectly patent that the inference intended to be conveyed by the stamp which the Federal Reserve Bank wanted the Agent to place on the checks was that we had in effect declined to pay the checks *in full*—when as a matter of fact we had declined to pay them at all because of the stamp placed thereon by the drawers.

The local Agent of the Express Company concurred in our view of the matter; and the Federal Reserve Bank immediately took the question up with the Superintendent of the Express Company in Houston and had him to wire the local Agent to place the stamp on the checks according to the instructions of the Federal Reserve Bank.

Again, notwithstanding the fact that the Federal Reserve Bank admitted that it could not collect the checks stamped as some of our depositors stamped them, still that Bank continued to solicit such checks so stamped for presentation through the Express Company; and I direct your particular attention to the last paragraph of a circular letter returned by the Federal Reserve Bank attached to such checks—a copy of which letter is annexed hereto as Exhibit A.

Many other instances might be cited, but the above facts are sufficient I think to give you a reasonably clear insight into the methods adopted by the Federal Reserve Bank of Dallas in its dealing with this bank; and I am sure that every bank in the State that has not bowed to the will of the Federal Reserve Bank has had similar or worse experience.

Finally, on this point the Federal Reserve Bank has sent its Special Agents here to interview our depositors—has sent them circular letters strongly urging their cooperation in opposition to our charging exchange; and apparently has not hesitated to do anything that could be done, within the law, to discredit us with customers who

E IN CENTER

have done business with us for over thirty years; and who never had any cause whatever to complain at our methods.

Of course, "coercion" may be relative terms—subject to the definition from the viewpoint of the party at interest; but I can say to you in all candor that the treatment accorded this Bank by the Federal Reserve Bank has caused us more embarrassment with our customers and depositors than were caused when two holdup men in broad daylight forced our Cashier in the vault at the point of a very big gun and robbed us of over $10,000.00; and I believe that anybody will admit that that was coercion!

Again referring to the propoganda of the Federal Reserve Bank in its efforts to discredit us with our customers because of the method adopted by some of them in cross-stamping their checks, I herewith hand you as Exhibit B a circular letter mailed to many of our customers with the documents therein referred to and thereto attached; and your particular attention is directed to the address of Mr. Wallace T. Simmons, President of the Simmons Hardware Company, St. Louis; and if market quotations, both public and private, are true it would seem that the earning capacity of that Company and the Federal Reserve Banks are about on a par—I am reliably informed that stock in the Simmons Hardware Company which was acquired a few years ago on a basis of $50.00 for $100.00 is difficult to acquire today, even if it can be acquired at all, on the basis of $350.00 for $100.00. Hence it would seem that the burdens (?) heretofore borne by that Company in the matter of paying exchange have not seriously affected or jeopardized its earning capacity—notwithstanding its President now sends up a mighty wail in opposition to a custom so ancient that it is well recognized as a commercial law; and one under which his Company has apparently prospered beyond the dreams of those smaller interior banks against which he so bitterly complains.

And yet the Federal Reserve Bank does not hesitate to use "Big Stick" methods in the interest of "Big Business", like Simmons Hardware Company and others, to the serious detriment of the smaller interior country banks who find it difficult to pay their stockholders reasonable devidends on their investments!

Now again referring to the Document under consideration, I beg to quote from page 5 thereof as follows:

"The reserve banks in extending their collection facilities to include the checks of those non-member banks which have declined to remit at par have generally, by letter or in person, undertaken to explain that the reserve banks could no longer decline to handle checks drawn upon those non-member banks, and that inasmuch as they did not care to remit at par and inasmuch as the reserve bank could not lawfully pay exchange, it would be necessary to make their collections in the only other way legally possible over the counter either in cash or suitable exchange."

Your particular attention is directed to the phrase "over the counter either in cash or suitable exchange"; and it would seem unfair to say that this phrase has any other meaning when construed

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with the clause from which it was quoted than that the Federal Reserve Bank would when checks were presented across the counter, under the facts stated, accept "suitable exchange" in payment; Is not this a fair inference?

But what are the facts?

Herewith I hand you two original collection letters marked Exhibit- C and D, covering items presented to this Bank by the local Agent of the American Railway Express Company—items sent by the Federal Reserve Bank of Dallas for collection on this Bank through the Express Company; and your particular attention is drawn to the instructions in bold face type on the front page of these letters directing the Agent's attention to the instructions on the back of them; and the most careful examination of these "Instructions to Agents" will fail to disclose a line or a syllable that by any stretch of the imagination would warrant the Agent in accepting "suitable exchange" in payment of the checks enclosed in these letters.

But, on the contrary, the instructions are very drastic in their terms and are specific to the effect that the "collection must be obtained in cash and remitted in cash"; and your particular attention is drawn to instruction (2): "Do not hold, under any circumstances, for conveniences of paying bank."

Therefore, there is no escape from the conclusion that the above quotation from Governor Harding's Report finds no application in actual practice and I will be very glad to have you submit him one of these collection letters and ascertain from him as to whether or not it was used by his authority or the authority of the Federal Reserve Board.

Of course, I appreciate that all I have said above, except to the extent that it may aid to keep the record straight, might as well have been left unsaid; because, judging from the attitude of the Federal Reserve Board as outlined in the correspondence between you and Governor Harding, which you so kindly sent me, and the attitude of the Federal Reserve Banks generally argument will avail nothing; and so relief will have to be sought thru some other channel.

Therefore, as you have doubtless been advised, a meeting was held in New Orleans on February 6, for the purpose of organizing a Bankers' Protective Association; and in due course the facts covering the methods adopted by the Federal Reserve Banks in dealing with non-member banks will be laid before Congress; and I believe these facts will establish beyond doubt that these methods have been both oppressive and coercive and I trust that Congress will then grant adequate relief.

However, in the meantime, relief will be sought through the various State Legislatures; and I feel hopeful that ultimately justice will be done to the banking business of the country generally.

Asking your indulgence for encroaching upon your time to such a tedious length and again assuring you of my grateful appreciation of the interest which you have manifested in the whole subject matter, I am, with kindest personal regards and best wishes,

Very truly,

(Sg.) H. FLOOD MADISON.

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18.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

Federal Reserve Bank of Dallas.

Dallas, Texas.

5 Bastrop State Bank,
Bastrop, La.:

We enclose for collections and returns the following described items drawn on —— ——.

Read carefully the instructions on back of this letter before presenting these items for payment.

11	2	909	100.00
11	2	912	95.03
		1,821	195.03

19.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

Exhibit 3.

Federal Reserve Bank of Dallas.

Notice of Dishonor.

Dallas, Texas, —— —, ——.

—— ——.

—— A., —— for $—, dated —— —, —, payable —— —, —, drawn by —— ——, on ——, to order of —— ——, endorsed by —— ——, was presented to the bank on which drawn, and payment at full face value was refused. Under the provisions of the Uniform Negotiable Instruments Act, you are hereby given notice

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of dishonor, and are advised that you will be held for payment of same, together with all costs, charges and interest.

Respectfully,

R. B. COLEMAN,
Assistant Cashier.

20.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

Bastrop, Louisiana, July 3, 1920.

Hon. H. B. Conner,
House of Representatives,
Baton Rouge, Louisiana.

DEAR MR. CONNER:

In re House Bill 40.

Referring to the conference had with Governor Parker yesterday afternoon, I herewith hand you the following instruments bearing on the subjects discussed:

1. An original collection letter covering collections sent by the Federal Reserve Bank of Dallas through the Express Company on the Bastrop State Bank; and the Federal Reserve Bank uses this identical form daily in making collections on the Bastrop State Bank through the Express Company; and has done so for the last several months.

I think it must be admitted that the "Instructions To Agents" on the back of this letter are exceedingly drastic and unfair; and it will take no argument to convince anyone familiar with the facts that this method of collecting cash items imposes a great burden on the banks.

2. A letter from the Express Agent showing that the Federal Reserve Bank pays $1.83 per $1,000.00 for collections made through the Express Company.

We offered to render the same service for $1.00 per $1,000.00; but the Federal Reserve Bank absolutely refuses to pay us a penny.

3. A letter from Hon. L. E. Thomas, Examiner of State Banks, under date of March 20, 1920.

While this Bill was under consideration by the Legislative Committee of the Louisiana Bankers' Association, I referred a copy of it with the full statement of the facts to Mr. Thomas; and he wrote me this letter in reply; and it clearly defines his attitude on the subject.

SE IN CENTER

4. A circular letter from the Federal Reserve Bank to those of our customers who cross-stamped their checks.

While the Federal Reserve Bank admits that it can not collect checks so stamped, still, as the last paragraph of this letter shows that Bank solicits our customers to continue to send such checks to it; The manifest purpose being to get in touch with our customers with the view of trying to dissuade them from so stamping their checks.

5. A letter written by me to Hon. Joseph E. Ransdell under date of March 9, 1920.

This letter covers the whole subject matter quite fully; and every fact therein stated can be substantiated by concrete undisputed evidence.

6. A copy of letter written May 5, 1920 by Governor Harding of the Federal Reserve Board to the Chairman of the Committee on Banking and Currency; and this letter was written immediately following the hearing held before that Committee, the Rules Committee and the Federal Reserve Board during three days preceding the Date of the letter.

That portion of this letter beginning with the last paragraph on page 2 with the words "The Board will respectfully represent," and ending with the concluding words of the same paragraph on page 3 "non-member State banks and private bankers as well as member banks" and the concluding paragraphs of the letter seem to me to clearly indicate that even the Federal Reserve Board is not wholly free from doubt as to its legal right to enforce the universal par clearance system which it has inaugurated.

I sincerely trust that the Governor will conclude to approve the Bill because it is of the most vital importance to every banker of the State; and you might say to him that if the Bill produces evil effects the Louisiana Bankers' Association will be just as active in its repeal as in its passage.

The whole point is that the banks are not seeking *benefits*, but *protection;* and I am sure that it will require no argument to convince any one that no provision in the Bill will ever be used by any bank to the detriment of its customers—even if the Bill warranted the accomplishment of that result: The bank is just as jealous of the rights of its customers as it is of its own reputation.

Again, the bankers are not wedded to any particular form of Bill—all they want is relief, protection from the coercive and unwarranted methods of the Federal Reserve Banks; and I think that the States should grant them that protection.

The point is that if this session of the Legislature were not so near an end the bankers would be perfectly willing to accept any other Bill that would afford them adequate relief and protection, but manifestly the introduction and passage of another Bill is out of the question.

Hence unless this Bill is approved by the Governor the banks will — left without relief for two years; and even if it be admitted that

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there are some provisions in the Bill that are technically objectionable; and there is doubt as to its constitutionality, still I think the banks could be depended on not to enforce the objectionable provisions, if any, and that they should be given the benefit of the doubt on the constitutional question; and let that question be determined by the Courts if anyone should ever attack the Bill on that ground.

Sincerely trusting that the Governor will approve the Bill and confidently believing that he will do so when he has concluded his investigation and has thus become fully advised upon the whole subject matter, I am,

Very truly,

(Sig.) H. FLOOD MADISON.

21.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

R. B. Clark, Tupelo, Mississippi. Active Vice President. The Bank of Tupelo.

On or about January 25th, 1920, witness noticed article appearing in the New Orleans Item relative to the campaign of the Federal Reserve Bank of the Sixth Federal Reserve District to enforce par clearance in that District.

The following is a true copy except that where the name M. B. Wellhorn appears in the second line of the second paragraph it should be M. B. Wellborn instead, and except that where the name Mr. Wellhorn appears in the fourth line of the third paragraph it should be "Mr. Wellborn":

"Reserve bank starts drive to collect checks at par—Many Southern banks violating Federal act by charging for collections, official says—Observance will mean great saving for Dixie.

"A national campaign has been launched by the Federal Reserve Board to compel observance of the provision of the Federal Reserve act, relative to the collection of checks at par.

"The campaign has been actively launched in New Orleans by Marcus Walker, manager of the local Federal Reserve Bank, and M. B. Wellhorn, governor of the Federal Reserve Bank of Atlanta, Ga., of which the New Orleans bank is a branch.

"The campaign is to be directed particularly against recalcitrant banks in the Atlanta district, as it is here that more than 29.6 per cent of the banks violating the Federal act are found. The practice

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of charging for the collection of checks, it is said in a recent st
ment by Mr. Wellhorn, is 'a burden and an unnecessary toll on co
merce.'

"'The universal application of the practice of collecting che
at par will mean a tremendous saving to commercial and busin
organizations all over the United States, and particularly in t
section, as the greatest number of banks refusing to institute t
practice are in the South,' said Mr. Walker, Thursday.

"The officers of the Federal Reserve System have been succes
in securing the cooperation of a great majority of the banks of t
country, but a large number have steadfastly refused to accede to t
request of the Government, and now an active campaign of solici
tion is to be carried on. He explained, that all member banks a
compelled to comply with the provisions, but that non-member St
banks were only directed to do so.

"If a merchant in New Orleans receives a check from his custo
in the country or anywhere outside of the city, drawn on a non-me
ber bank, and the New Orleans merchant deposits this with a me
ber bank here, he is charged for collection of this check if the no
member bank refuses to comply with the Federal provision an
charges the city bank for the payment of the order," said M
Walker. "While the charge on a single check may not be larg
the aggregate number of checks handled during the year by an
bank records a large total, which, of course, must inevitably be pa
by the merchants and business houses. This actual expense must t
added to the additional cost of bookkeeping and clerical work co
sequent upon the practice of some of the banks following one pra
tice and some the other."

"'What we are going to do,' said Mr. Walker, 'when a non-me
ber bank refuses to pay the check at par is to collect the check at th
counter, even if a special messenger must be sent to the bank. Th
will have the effect of compelling the recalcitrant bank to acce
to the par-collection provision, as it will draw considerably on the
cash reserve.'

"According to Mr. Walker, 'of the 30,260 banks in the Unite
States 26,315 are on the Fegleral Reserve par list. Of the 3,945 r
maining banks which are not in the par list 1,168 are in the Atla
district. Only 2,777 banks in the other 10 reserve districts are n
on the par list and do not comply with the par collection of chec
of the Federal act."

Witness wrote to the New Orleans Item asking them who was th
author of the item above referred to.

Witness is not able to find his carbon copy of the letter but th
reply of said newspaper (the original) is hereto attached as *Exhi
B*, dated at New Orleans January 28th, 1920 and signed by "I. V
Shannon, Commercial Editor."

The Bank of Tupelo is situated in the Eighth Federal Reser
Dist.

During the past five years the Bank of Tupelo was solicited num
bers of times to agree to the Federal Reserve Bank's par clearan

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an. These solicitations were made by circular letters, by personal licitations of the Manager of the Federal Reserve Branch of Memhis, Tenn., and by other representatives of said bank. In support ere is attached hereto as *Exhibit C* circular letter of the St. Louis ederal Reserve Bank dated May 10th, 1917 and carbon copy of our ply dated May 25th, 1917; and said bank's circular letter of Deember 15th, 1919, and their "par clearance" map sent with said tter; also four circular letters of the Memphis branch of the St. ouis Federal Reserve Bank respectively dated January 31st, 1919, ay 27th, 1919, July 15th, 1919, and December 20th, 1919.

We signed such an agreement about the middle of February 1920 nd we (The Bank of Tupelo) were visited by a young man who ntroduced himself as a representative of the Memphis, Tennessee, ranch of the St. Louis Federal Reserve Bank. He stated that he ad been instructed by Mr. John J. Hetlin, Manager of the Memhis branch, to call on us to secure our agreement to accede to their par clearance" (so called) plan. After having declined to comply ith their request witness asked the representative what course the ederal Reserve Bank would pursue following their refusal to so comply. He replied, in substance, that it was the purpose of the Federal Reserve Bank to publish the name of the Bank of Tupelo on the Federal Reserve Board's list of banks on which items could be collected at par and that the list would appear on, and be distributed broadcast about, the 15th of March (1920), and undertook to impress upon me the fact that if and after the name of the Bank of Tupelo did appear on such par list we would find it very difficult to continue to decline to remit at par because of the embarrassment of having to refuse payment on the checks that were presented to us by the Federal Reserve Bank. With the co-operation of the bankers and others in the State of Mississippi, witness secured the introduction in and passage by the Legislature of the State of Mississippi an Act known as House Bill No. 651 which Act was approved by the Governor of the State of Mississippi on the 6th day of March 1920 and which effectively protects the state banks of the State of Mississippi from the designs of the Federal Reserve system. It prevented the Federal Reserve Bank from making counter presentations of checks and demanding therefor payment in cash.

The expense and cost incident to the remission of funds to cover drawn upon witness' bank and held by payees non-resident of Tupelo is composed of the cost of stationery, postage, clerk hire and a proportionate part of the entire operating overhead expense and also the cost of maintaining balances with correspondents in numerous financial centers with which to liquidate the drafts sent in payment of the aggregate sum of such items. The effect of payment of a check drawn upon witness' bank in Tupelo through the medium of a bank draft on a correspondent in St. Louis to the St. Louis holder is that said holder is thereby unable to convert the Tupelo order, say for $100.00, into St. Louis cash amounting to $99.90. The ten cents having been charged by this bank for so converting for him this Tupelo order and which cost to him is very much lower than he can possibly secure the same service by any other means.

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The Bank of Tupelo was entered upon the par list of the Fe
Reserve Bank having jurisdiction over its district. Attached he
marked *Exhibit D* is a letter addressed to the Bank of Nettl
(Mississippi), which bank is owned by the Bank of Tupelo, b
Memphis Branch of the St. Louis Federal Reserve Bank, d
March 24th, 1920, which states that the Bank of Nettleton had
placed on the par list, at the same time acknowledging in said l
that The Bank of Nettleton had never agreed thereto. The sam
ter was received by the Bank of Tupelo but cannot be located at
time. It was done without the consent and notwithstanding the
test of said bank. See Exhibit hereto attached. The result o
placing of the name of the Bank of Tupelo on the par list o
Federal Reserve Bank was the accumulation of a number of
drawn on the Bank of Tupelo in the hands of the Federal Re
Bank with the expectation on the part of the original holders of
checks that they would be paid and remitted for at par by the B
of Tupelo although the Bank of Tupelo had never agreed but
declined to agree to any such arrangements of par remittance.

Following the passage of the Act of Mississippi on the subje
par clearance The Federal Reserve Bank found themselves in
session of a very large number of items drawn on Mississippi
banks which they could not collect at par and which they re
to accept payment for in accordance with the terms of the Missi
Statute; therefore, the Federal Reserve Bank simply returned t
items to the source from which they came and in due course of t
said items came to us through regular channels, as formerly,
were remitted for by us less our statutory charge of one-tenth o
per cent. The endorsements on such items, when paid by us, sh
that they had been handled as here stated.

There is attached hereto as *Exhibit E* the original telegram
the Bank of Tupelo by the Memphis Branch of the St. Louis F
eral Reserve Bank, dated March 8th, 1920, requesting them to a
whether or not they will pay "at face value" checks drawn on t
at that time in the latter's hands and to be received by them.
noted in pencil on said *Exhibit E* the former's reply was posit
negative but made by telephone and, therefore, no copy there
be hereto attached. Witness' bank was given to understand th
it refused to pay the checks at par that said checks would b
turned, via the route thru which they came to the Federal
serve Bank, to the former's customers with notice thereon th
had refused payment with the expectation that the customers w
resent the non-payment of said checks and thereby place it in
an embarrassing position with the said customer that it would
compelled to comply with their "par clearance" demands. They
only proposed to place such notice upon said checks but actually
so, and one of the said notices so attached by the Memphis, Ten
see, branch of the Federal Reserve Bank is hereto attached as
hibit F. The said attached notice was taken from a check s
turned to the Mississippi Automobile Company, Tupelo, Missis

The Simmons Hardware Company, various branches of the
ternational Shoe Company and the Graham Paper Company, al

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Louis, Missouri, and all of which were doing a heavy business in State of Mississippi, returned our customers' checks to them and dertook at the same time a campaign among our customers to judice said customers against us because of the position we had en and because of the statutory protection we had secured at the nds of our Legislature.

There is attached hereto as *Exhibit G* letter of the Graham Paper mpany addressed to J. T. Fargason Company, Tupelo, carbon py of Bank of Tupelo's letter of April 9th, 1920 addressed to said rgason Company in answer to said letter of Graham Paper Comny and the Graham Paper Company's letter dated April 17th, 20 addressed to said Fargason Company as a reply to bank's ter above referred to, also letter of Simmons Hardware Company dressed to the Tupelo Lumber Company, Tupelo, dated March th, 1920, also letter of the Mississippi Automobile Company, Tulo addressed to the Simmons Hardware Company, dated March rd, 1920 and the Simmons Hardware Company's reply thereto ted March 27th, 1920, also letter of the Friedman-Shelby Branch the International Shoe Company addressed to C. C. Walter, Tulo, dated April 7th, 1920, also letter of Roberts, Johnson & Rand, anch of the International Shoe Company addressed to F. C. Mehey, dated April 10th, 1920 (all said parties were customers of Bank of Tupelo) also letter of Belknap Hardware & Mfg. Comny, Louisville, Kentucky, addressed to the Mercantile Trust Comny of St. Louis, dated March 31st, 1920 in regard to a check of B. Horn, Byhalia, Mississippi, which letter, through error unubtedly, was allowed to go back to Mr. Horn attached to a check hich was returned to him. Witness has in his possession numerous her letters addressed to merchants all over the State of Mississippi the above mentioned firms and others but is not attached hereto cause of their similarity to this exhibit. There is also attached reto as a part of this *Exhibit G* a letter addressed by Simmons ardware Copmany on April 13th, 1920 to Eason & Gaines, Herndo, Miss., wherein said Hardware Company announces their ination to adjust themselves to the situation and which letter clearly s out the attitude that said Hardware Company found to be uniersal among the merchants of the State of Mississippi, that is, said ardware Company acknowledges in said letter that the merchants the State of Mississippi are practically one hundred per cent faorable to the attitude and rights of the banks in the state of Mississippi.

Witness' customers brought these matters to his attention. The ederal Reserve Bank had attempted to leave the impression with his stomers that the passage of said law in the State of Mississippi hanged the long prevailing method of handling such checks, that that it changed the method that had prevailed for many years efore the passage of said law. They attempted to leave the impreson with his customers that the charge of one-tenth of one per cent augurated by the passage of the law increased the cost of such colctions. He easily explained to his customers that such is not the se at all; that the law was enacted so that he might retain the

method of handling such checks that had been customary for m
years; that not only did the law merely continue in force the
tomary method of handling such checks but that it actually red
the cost by reason of the fact that it enforced a uniform compe
tion to the remitting bank of one-tenth of one per cent whereas
vious to the passage of the act each bank was free to make its
rate and in many instances were charging as high as one-fourt
one per cent and in some instances as high as thirty-five cents
one hundred Dollars; that, as stated, the passage of the act was
only not harmful but was beneficial in that it secured a much l
rate (and a uniform rate) than had been prevalent and which
of one-tenth of one per cent had been publicly conceded by G
ernor Harding of the Federal Reserve Board to be entirely rea
able. In every case his explanation was satisfactory to the custo

There is hardly a limit to the amount of evidence that can b
troduced to show clearly the unfair and arbitrary purposes
methods of the Federal Reserve Board and Bank in their attemp
force upon the non-member banks their demands, but witnes
lieves the answers and exhibits to the foregoing interrogatories c
a most substantial part of controversy for which the Federal Res
Board is wholly responsible.

22.

The following document was returned with and made a par
said interrogatories, and was tendered in evidence by plaintiffs
objected to by defendants on the same ground taken as to the
terrogatories, and said objection was sustained by the court and s
evidence rejected, and plaintiffs excepted and assign error on s
ruling for the same reasons set forth in the foregoing assignment
error number ten.

The New Orleans Item.

New Orleans, January 28, 192

Mr. R. B. Clark, Vice-Pres.,
The Bank of Tupelo,
Tupelo, Miss.

DEAR SIR:

The information contained in the article headed "Reserve Ba
Starts Drive to Collect Checks at Par," came from Mr. Mar
Walker, Manager of the New Orleans branch of the Federal R
serve Bank. The writer usually handles such information for t
paper.

A request to go over to the Federal Reserve Bank to obtain t
information came to the writer, but as he was unable to handl
at the time, Mr. Sam A. Trufant, Jr., another member of the s
was detailed to get the information and write it up.

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The information contained in his article is authentic.

Respectfully,

I. V. SHANNON,
Commercial Editor.

23.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

Federal Reserve Bank of St. Louis.

May 10, 1917.

Bank of Tupelo,
Tupelo, Miss.

GENTLEMEN:

On the 15th of last July, we addressed you regarding the Federal Reserve check clearing and collection system then being inaugurated, and which has not been in operation for about nine months. This system contemplates the ultimate collection at par of checks on all of the banks in the United States.

The names of more than fifteen thousand banks are now included in our par list, and these banks represent more than half the total number of banks in the country.

We wish to extend to both member and non-member banks every facility which will enable them to co-operate with the Federal Reserve Banks in the up-building of the system, and in the extension to the public of the accruing benefits.

We are now writing to all of the non-member banks in this District which did not respond to our former letter, and which are not now upon the par list of the Federal Reserve System.

Briefly stated, our proposition is as follows:

Your name will be added to our par list and we will send to you all checks we receive drawn on your bank and checks on such other banks as you may arrange to handle for us. These letters to be remitted for by you, at par, upon receipt in exchange acceptable to us. We will furnish self-addressed, stamped envelope for use by you in making returns, and you may, at your option, remit currency to cover items received from us. Should you elect to cover by currency shipments, we will agree to pay the costs of such shipments.

The above proposition applies only to checks on banks, and does not apply to collection items. Should we at any time send to you collection items such as notes and drafts, these items will of course, be subject to your usual charge for collecting and making returns to cover.

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We hope to receive your co-operation in this matter, and will much pleased to discuss with you, either by correspondence or p sonally, any of the points involved.

We enclose herein self-addressed envelope for your reply, wh we await with interest.

Respectfully,

ROLLA WELLS,
Governor

24.

The following document was returned with and made a part said interrogatories, and was tendered in evidence by plaintiffs a objected to by defendants on the same ground taken as to the terrogatories, and said objection was sustained by the court and s evidence rejected, and plaintiffs excepted and assign error on s ruling for the same reasons set forth in the foregoing assignment error number ten.

May 25, 191

Mr. Rolla Wells, Governor,
Federal Reserve Bank,
St. Louis, Missouri.

DEAR SIR:

Your circular letter of the 23rd. inst. to hand. The positio this bank remains entirely unchanged since our reply to your cir lar letter of July 15, 1916. We have never been able to see the le particle of justice in the demand that we perform an actual serv which cost us actual money, when to do so is, in its last analy only a means by which certain interests avoid payment for ser rendered.

We are certainly whole-heartedly in sympathy with the ma features of the Federal Reserve Act, and the activities of the Fede Reserve Board and Federal Reserve Banks, but we are unalterab opposed to the par collection of checks, for it simply means that are denied legitimate revenue, for the benefit of business inter that have not the moral courage to demand of their customers p ment of bills in par funds.

Believe us to be entirely sincere and honest in our views.

Very truly yours,

R. B. CLARK,
Cashier.

25.

The following document was returned with and made a part said interrogatories, and was tendered in evidence by plaintiffs a objected to by defendants on the same ground taken as to the terrogatories, and said objection was sustained by the court and s evidence rejected, and plaintiffs excepted and assign error on s ruling for the same reasons set forth in the foregoing assignment error number ten.

Federal Reserve Bank of St. Louis.

December 15, 1919.

Bank of Tupelo,
Tupelo, Miss.

GENTLEMEN:

We enclose a map of the United States showing the status as of December first of the campaign conducted by the Federal Reserve Banks to induce all banks to remit at par for checks drawn upon them, received from the Federal Reserve Bank of the district in which they are located.

You will note that the solid par territory, that is that portion shown in red, extends practically from coast to coast.

In respect to the district served by the Federal Reserve Bank of St. Louis and its Branches, all of that part of Illinois, Indiana, Missouri and Tennessee located therein is now entirely par.

Out of approximately thirty-two hundred banks in this District, less than five hundred are now non-par. The banks in the Eighth District that are not on the par list are all located in the states of Arkansas, Kentucky and Mississippi.

We take this opportunity of thanking the banks that have co-operated with us in the matter of extending the Federal Reserve Check Collection System and we confidently believe that it is only a matter of a short time until the remaining banks will join with the great majority in paying their checks at one hundred cents on the dollar.

Yours very truly,

O. M. ATTEBERY,
Deputy Governor.

Map included in Exhibit "C" of Federal Reserve Bank's par list December 1, 1919.

26.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

Memphis Branch of
Federal Reserve Bank of St. Louis,
Memphis, Tenn.

January 31, 1919.

Bank of Tupelo,
Tupelo, Miss.

GENTLEMEN:

In checking over the various State Banks and Trust Companies in our district, we find that you have not availed yourself of the opportunities we have offered you by being on our par list.

Parring with us entitles you to have stamped or printed on all checks drawn on your bank "Collectible at Par through the Federal Reserve Bank of St. Louis—Memphis Branch" which is an advertisement to you and your customer in that such items drawn on your bank are paid by you dollar for dollar.

If you should have an accumulation of currency or coin you wish to dispose of, we will gladly take it from you in payment of items sent you, assuming all transportation charges. Enclosed in each list of checks sent you will be a self addressed stamped envelop for use by you in making returns.

There are now approximately 19,000 banks in the United States included in the par list of the Federal Reserve System on which checks are collectible at par through any Federal Reserve Bank or branch. More than 2,000 *State Banks and Trust Companies* have been added to the par list in the past four months.

We now enjoy the co-operation of the majority of the banks in the country, and ask you to give this your due consideration. Stamped envelop is sent you herewith.

Trusting that we may receive a favorable reply from you, we are

Yours very truly,

JNO. J. HEFLIN,
Manager.

27.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

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Memphis Branch

Federal Reserve Bank of St. Louis,

Memphis, Tennessee.

May 27, 1919.

Mr. R. B. Clark, cashier,
Bank of Tupelo,
Tupelo, Mississippi.

DEAR SIR:

May we invite your further consideration to the proposition set forth in former letters to you, requesting that you remit to us at par for such checks on yourselves as we may receive.

You are, probably, aware of the fact that the Federal Reserve Banks are engaged in a campaign looking to the extension of the Federal Reserve Par List. We feel that it will be of interest to you to know that our efforts towards securing a universal par system are meeting with favorable attention, and we are convinced that such a system will be a material benefit to all banks. This would, undoubtedly, give wider currency to bank checks, thereby reducing shipments of currency and eliminating to some extent an unnecessary expense and some risk.

Some two-thirds of all banks in the United States are now on our par list. Every bank in the first and second Federal Reserve Districts is now par. The present campaign is working toward the end of all banks being par.

You have, as yet, not indicated your willingness to co-operate with us in the matter of remitting at par and we feel that you may be looking at the matter from a local rather than a general point of view. It is to be admitted that a system of universal par would permit the machinery of national business to move with more smoothness, and it is generally agreed that such a system will eventually be in operation.

Upon instructions from you we shall be glad to add your name to the Federal Reserve par list, either for your own checks, or for all items on your town.

We hope that you will consider the matter throughly and that we may receive an early and favorable reply.

Yours very truly,

JNO. J. HEFLIN,
Manager.

28.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said

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evidence rejected, and plaintiffs excepted and assign error on s
ruling for the same reasons set forth in the foregoing assignment
error number ten.

July 15, 1919

Mr. R. B. Clark, cashier,
Bank of Tupelo,
Tupelo, Miss.

DEAR SIR:

Your bank is in the favorable position of being eligible for mem
bership in the Federal Reserve System. You no doubt wish
consider definitely the matter of entering the system in the ne
future, and I want to put before you in a general way some of th
features that will be of interest to you in this connection.

In order to apply for membership in the system it is only nece
sary that you send to the Federal Reserve Agent two copies of th
last examination of your bank and several forms including a res
lution of your Board of Directors and a recent statement of th
bank's condition. You will apply for stock equal to 6% of you
capital and surplus but will pay in at once only one half of thi
amount. No bank has yet been called upon for the full 6%. Cumu
lative dividend on this investment is 6%. You would keep on depo
with us an amount equal to 7% of your demand deposits and 3%
of your time deposits. These balances do not bear interest, b
members quite generally feel that this feature is more than offset b
numerous advantages.

In entering the system you do not lose any of your present right
as a State bank. You will continue to be examined by the Stat
Banking Department, and your institution will not be subject t
the regulations of the Comptroller of the Currency. Membership i
the Federal Reserve System does not prevent you from extendin
lines of any size that are authorized by the laws of the State. Line
in excess of 10% of your capital and surplus are not subject to re
discount with us but the fact that you have access to the Federa
Reserve facilities for much of your paper would put you in a stronge
position to handle the lines on which you prefer to extend yourself.

The discount rates are at present attractive both on the bank
own 15 day paper and customer's notes. If you are accustomed t
making loans for a period of more than 90 days on commercial pape
and more than 6 months on farm paper, such notes can be held i
your own portfolio until they come within the limits mentioned and
can then be offered us for rediscount.

Some of the other facilities to be gained by membership are:

On your order, either by letter or telegrams, we will ship yo
currency paying all charges, including the cost of your wire to us
requesting the shipment. Currency or coin may also be shipped t
us for your account at our expense. Upon instructions from you we
will either credit your account on our books or deposit it with any
local bank for your credit.

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Upon request we will transfer funds without expense by wire for your account with any member bank in any Federal Reserve or Branch city, and will also stand the expense of your wire to us ordering the transfer to be made.

We shall be glad to receive your government securities and hold in custody, issuing a non-negotiable receipt therefor.

We can pay your Certificates of Indebtedness here as they mature as well as the coupons from your Liberty Bonds, giving you credit on date of maturity therefor. Upon request we will clip your coupons from any bonds which we hold as collateral or as custodian and credit you with the proceeds.

Some non-members object to the features of remitting at par for their own items and leaving a balance with us without interest, but banks that belong to the system almost universally express themselves as feeling that these apparent disadvantages are unimportant in comparison with the many valuable assets growing out of membership. It is not improbable that all of the banks in the United States will be remitting at par within a short time. When your bank becomes a member of the system your access to its incomparable resources is no longer circuitous, but direct and dependable.

If you feel interested in this matter at this time, I shall be glad to have you write me or phone me so that some of us may have the opportunity of going over the matter with you personally. We shall be glad to have you visit our bank at Memphis any time.

Very truly yours,

JNO. J. HEFLIN,
Manager
(*Memphis Branch F. R. Bank, St. Louis*).

29.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

Federal Reserve Bank of St. Louis,

Memphis, Tenn.

December 20, 1919.

Bank of Tupelo,
Tupelo, Mississippi.

GENTLEMEN:

For your information, and to advise you of the very decided progress that is being made *in the campaign being conducted by the Federal Reserve Banks* to have all banks agree to remit at par for checks and drafts drawn upon them received from Federal Reserve

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Banks, we feel you will be interested to know that out of a total 29,409 banks in the United States all but 5,115 are now in the p list.

All banks in the following 26 states are on the par list:

Maine,	Indiana,
New Hampshire,	Maryland,
Vermont,	District of Columbia,
Massachusetts,	California,
Iowa,	Idaho,
Rhode Island,	Nevada,
Missouri,	Utah,
Connecticut,	Oklahoma,
New York,	Ohio.
New Jersey	Colorado,
Illinois,	Kansas,
Pennsylvania,	New Mexico,
Delaware,	Wyoming.

Also all banks in that part of Tennessee in the eighth Federal R serve District.

The total number added from January 1st, 1919 to December 1st, 1919 in the United States was..... 5,9

In the Eighth District, of which this territory is a part, 240 ban were added to the par list in November and out of a total of 3,1 banks there remain only 461 not on the par list, by states as follo

State.	No. of Banks not on the par list.
Arkansas	206
Mississippi	153
Kentucky	102
Illinois	None.
Indiana	None.
Missouri	None.
Tennessee	None.
Total	461

Of all the banks in the United States there are only approximate 15% left which are not remitting at par. Many banks in our ter tory are accepting this arrangement and we should appreciate a advice from you instructing us to add the name of your bank t the par list of the Memphis Branch Federal Reserve Bank for th Federal Reserve System.

Kindly let us hear from you.

Very truly yours,

JNO. J. HEFLIN,
Manager.

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30.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

Federal Reserve Bank of St. Louis,

Memphis, Tennessee.

March 24, 1920.

Bank of Nettleton,
Nettleton, Miss.

GENTLEMEN:

We are forwarding you today cash letter composed of checks on yourselves. Although we have received no agreement from you to par items, we thought it best to explain to you that your name appears on the Federal Reserve Par list, which is now in our hands. The names of quite a few Mississippi banks were sent to Washington several weeks ago to enable the Federal Reserve Board to have sufficient time for preparing the printed booklet known as the "March Supplement."

We, of course, will be receiving checks on your bank, and you are no doubt aware that Section 13 of the Federal Reserve Act provides that no exchange charge shall be made against a Federal Reserve Bank, and we kindly ask that if these checks cannot be remitted to us for their face value, that you certify same and return to us and we shall accept your decision as definite for the present.

Yours respectfully,

A. J. WILLIAMS,
Cashier.

31.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

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Federal Reserve Bank of St. Louis,

Memphis, Tennessee.

Bank of Guntown,
Guntown, Miss. March 19, 1920.

GENTLEMEN:

We are forwarding you today cash letter composed of checks o yourselves. Although we have received no agreement from you par items, we thought it best to explain to you that your name ap pears on the Federal Reserve Par List, which is now in our hands The names of quite a few Mississippi banks were sent to Was ington several weeks ago to enable the Federal Reserve Board have sufficient time for preparing the printed booklet known as th "March Supplement."

We, of course, will be receiving checks on your bank, and yo are no doubt aware that Section 13 of the Federal Reserve Act pro vides that no exchange charge shall be made against a Federal Re serve Bank, and we kindly ask that if these checks cannot be re mitted to us for their face value, that you certify same and return to us and we shall accept your decision as definite for the present.

Yours respectfully,

A. J. WILLIAMS,
Cashier.

32.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the in terrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

Western Union Telegram.

Memphis, Tenn., 4.08 P. M., Mch. 8, 1920.

Bank of Tupelo,
Tupelo, Miss.:

Please advise by wire at our expense if you will continue to pay at face value checks drawn by your customers on your bank that are forwarded by us for collection and returns; quick reply is important for our guidance as to disposition of checks on you now in our hands and to be received.

MEMPHIS BRANCH FEDERAL RESERVE BANK.

Replied by phone "No."

33.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

As the result of an Act of the Legislature of the State of Mississippi, approved March 8, 1920, the Federal Reserve Bank in St. Louis is obliged to decline to handle checks drawn on non-member banks in Mississippi. If the bank you are doing business with is not a member of the Federal Reserve System, kindly remit in St. Louis, Chicago or New York exchange, or Money Order, and very much oblige us.

Memphis Branch,

Federal Reserve Bank of St. Louis,

Jno. J. Heflin, Manager,

A. J. Williams, Cashier.

Memphis, Tennessee.

We regret that it is necessary for us to return the enclosed check to you unpaid for the reason that the bank on which it is drawn declined to make payment at face value, i. e., without deducting exchange and you are no doubt aware that Federal Reserve Banks do not pay exchange. The check is not protested for non-payment because of a law that has just been passed in Mississippi, at the instance of some interested bankers, declaring it to be unlawful for any bank in that state either state or national—to pay a check in full without deducting one-tenth of one per cent exchange, and the statute also declares it to be unlawful for any notary to protest such checks when refusal of payment is based on the non-payment of exchange by the party presenting the check whether it be Federal Reserve Bank, postoffice, express company or other agency. Exception is made of some checks, among them being those making settlements with the United States or the State of Mississippi or payable to persons in Mississippi.

Several Mississippi banks advise us that they expect to adhere closely to the above statute.

The above information is given you as our endorser.

Very truly yours,

MEMPHIS BRANCH FEDERAL RESERVE BANK OF ST. LOUIS.

34.

The following document was returned with and made a part said interrogatories, and was tendered in evidence by plaintiffs a objected to by defendants on the same ground taken as to the terrogatories, and said objection was sustained by the court and s evidence rejected, and plaintiffs excepted and assign error on s ruling for the same reasons set forth in the foregoing assignment error number ten.

Saint Louis, April 7, 192

J. T. Fargason Company,
Tupelo, Mississippi.

GENTLEMEN:

We have yours of the 5th returning your check of the 30th $250.73. We observe you object very seriously to giving us change on St. Louis, Chicago or New York in lieu of your ch which as explained costs us four times the rate in effect in collect Mississippi items before the recent law passed by your State Legis ture.

Under the circumstances we are accepting your check and w stand the loss in this instance, but we trust, inasmuch as our l are payable in funds current at par in St. Louis, you will proc exchange, which we presume you can do without any cost to yo selves. We regret you impute to us the wrong attitude in t matter, but solely a matter of dollars and cents. Because we co not handle your check at the old rate was why it was returned you.

We do not care to enter into argument as to the merits of t law, or the feeling the Mississippi banks may have towards the Fe eral Reserve Bank System.

Yours truly,

GRAHAM PAPER COMPANY

35.

The following document was returned with and made a part said interrogatories, and was tendered in evidence by plaintiffs a objected to by defendants on the same ground taken as to the terrogatories, and said objection was sustained by the court and s evidence rejected, and plaintiffs e pted and assign error on s ruling for the same reasons set for a the foregoing assignment error number ten.

The Bank of Tupelo,
Tupelo, Miss.

J. T. Fargason Company, April 9th, 1920.
Tupelo, Miss.

GENTLEMEN:

Through your kindness we have before us the letter addressed to you April 7th by the Graham Paper Company of St. Louis.

This return of checks to the merchants of this state is confined to some five or six concerns in St. Louis. We have in our possession a number of letters written by those five or six St. Louis concerns. We regret exceedingly that it is necessary to advise that those St. Louis concerns are either making misrepresentations to the merchants in this section or are being misinformed from some source as to prevailing conditions.

The Graham Paper Company states that it now costs them four times as much to collect Mississippi items as it did before the recent passage of a certain law by the Mississippi Legislature. This is not only untrue, but, as a matter of fact, the cost of collecting items over the state of Mississipi as a whole was reduced by the law.

Prior to the passage of the law, a few banks in the state at non-competitive points were charging in excess of $1.00 per thousand and sometimes as high as $2.50 per thousand. This was not being practiced in a general way and by the larger banks, but the Mississippi law referred to fixed a uniform rate of $1.00 per thousand and no bank in the State can charge more.

The letters coming from those St. Louis concerns seem to attempt to convey the idea to the local merchants that the passage of this law in Mississippi brought on a charge for the collecting and remitting of these personal checks that did not previously exist. This also is untrue. From time immemorial the banks have made this charge.

The merchants in this country have known this all the time and they are convinced that this item of expense has always represented a part of the cost of the goods that they buy in St. Louis. We also think so and think that it is a perfectly natural conclusion, but these St. Louis concerns apparently are trying to leave the impression that such is not the case but that hereafter such expense will necessarily be added into the price of goods, or in other words, that the effect of this law will be to put up the price of merchandise.

Other letters would have the merchants in this section to believe that the banks of St. Louis will not accept for deposit from them these checks that are being sent them by the merchants of this State. This may be true but if it is, then the statements made to the banks in this State by the banks in St. Louis are not true, and to evidence that such is not true, we continue to receive business from our St. Louis correspondents just as we always have.

However, if such were the case you can advise the Graham Paper company or any other concern in St. Louis that if they will send

these checks direct to the Mississippi bank on which they are dra
they will very promptly receive in return therefor Chicago, N
York or St. Louis exchange less the long established, custom
charge (and now statutory charge) of $1.00 per thousand.

By referring to the Bankers Encyclopedia Blue Book, we
that under the St. Louis Clearing House rules, which are made
the St. Louis banks themselves, the banks of St. Louis are or w
charging their customers $2.00 per thousand on all items drawn
Mississippi banks and the banks of many other states. Now it
not costing the St. Louis banks or the St. Louis Clearing Hous
average of $2.00 per thousand to collect these items and, therefo
they were making a profit off of their own customers in St. Lo
Notwithstanding which they are willing to allow themselves to
used in this unwarranted manner by the Federal Reserve Bank
their efforts to deprive the country banks of Mississippi and e
where of this compensation for transfering funds from these lo
points to St. Louis.

We do not pretend to understand their motive, but certainly
the end it cannot profit them because their position is wholly u
reasonable and will not be tolerated by the merchants, at leas
the State of Mississippi.

To sum up the situation:

First. No bank in the state of Mississippi has ever attempted
do one thing to injure in any way the Federal Reserve Banks;
the other hand the Federal Reserve Bank has attempted by t
most offensive means possible, without any warrant of law, to e
force their ideas upon the state banks, and the law passed by t
legislature of the state of Mississippi was purely a measure of d
fense which incidentally gave the St. Louis banks, and all oth
such banks, protection against those banks in the state of Mississip
which had been charging a rate higher than $1.00 per thousand.

Second. There is absolutely nothing in the Federal Reserve A
that can be interpreted as requiring the St. Louis banks to depo
such checks with the Federal Reserve Banks and they are not doi
so when such checks are not collectible at par, therefore, the S
Louis concerns can deposit these checks with their St. Louis ban
and the St. Louis banks will, just as they have always done, se
these checks direct to the Mississippi banks and the Mississippi banks
will, just as they have always done, deduct $1.00 per thousand a
remit them in acceptable exchange.

Third. Even were such not the case, as stated, the Mississip
banks will give direct service to those St. Louis concerns at the sa
rate and in the same manner that they would give such servic
the St. Louis bank, therefore, they cannot sustain the statement th
it would cost them more at the present time than it has formerl
Much more could be said but certainly this ought to be sufficient.

The only change from the condition that has existed for many
many years is the agitation initiated by the Federal Reserve Bank
and those St. Louis concerns, and their position is not even sustaine

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by the Federal Reserve Act, but only by a very arbitrary interpretation and ruling of the Federal Reserve Board, which, as you know, has absolutely no authority or jurisdiction over non-member state banks.

Yours very truly,

R. B. CLARK,
Vice-Prest.

36.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

April 17, 1920.

The J. T. Fargason Company,
Tupelo, Mississippi.

GENTLEMEN:

Responding to yours of the 12th, we have read carefully the letter you enclose of the Bank of Tupelo by Mr. R. B. Clark V. P., but it is natural we cannot agree with him because it has always been understood that the selling house is entitled to payment of their bills in full and they should not be forced to pay a charge to get the money when bills become due. Houses have by custom stood the small charge previously, but when it is multiplied as has been done it is quite a serious problem because in a year's time in a business of magnitude it runs to a heavy sum. Your bank has apparently not explained to you the one essential point as to why we have to pay our bank when depositing your check more than the dollar a thousand your bank charges the St. Louis institution and that is, when checks are taken on deposit they are treated as cash items credited to our account, but the bank does not have the money and cannot obtain it under four to six days and this must be worth something to them, and at the present high rates on money it is fully worth $1.00 a thousand.

We think there is no argument about this point, and while we have stood moderate cost in the past, we do not feel we should be forced to pay such a heavy toll as is now entailed upon us.

We recognize your entire right to purchase goods from those who will accept your checks, and we have not stated and do not imply that we will not do so, but we are trying to place before you the position we are in and we believe you will agree with us when you give us an order at such and such a definite price it is with the expectation payment will be made in funds current at par at the home office.

We are not holding any brief for the St. Louis banks or any others outside the state of Mississippi but hope you can readily see our

banks are not profiteering when they charge us in addition to the $1.00 arbitrary charge made them by Mississippi banks in collecting checks.

Yours truly,

GRAHAM PAPER COMPANY
E. T. WILLIAMS,
Treas.

37.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

Tupelo Lbr. Co.,
Tupelo, Miss.

GENTLEMEN:

We have your favor of the 22nd inst., returning your check of March 13th for $226.22, and note carefully what you say.

You understand, we assume, that it is not the relatively small item of one-tenth of one per cent that we are taking a stand against—it is the principle of paying tribute of any amount at all for a service that is not rendered. You appreciate, we assume, that this new Mississippi Law says in effect that Mississippi banks may take money from their depositors with the privilege of paying back to their depositors, or their order, a less amount than they deposit—calling the difference which they retain "Exchange." They attempt to accomplish this by making the payment charge at the expense of their depositors' creditors to whom they render no service whatever. As a matter of fact, this payment charge simply increases the depositors creditors cost of doing business and necessitates a higher price for goods, so that in the end this charge is passed on the depositors and we have the true situation, namely: a subsidy paid by the community to the local bank, or as stated before, a Law and a custom by which a bank may take money from its depositors and retain a portion of it for a service which it does not render.

As we explained to you in our former letter, the Federal Reserve Bank, which saved us all from almost financial collapse during the war, has accomplished already ninety per cent of universal par clearance in this country. It is to the advantage of American business that this accomplishment may be made one hundred per cent—so that your check and our check may be worth one hundred cents on the dollar anywhere in the United States.

If we should handle your check for collection what would happen is this: We would send it to your bank for payment either directly or through our bank here; your bank would then write another check on St. Louis or New York, or some other central reserve point.

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with which to pay this check—but for a less amount than $226.22. They would not be rendering us a service by this, as we sell our goods F. O. B. St. Louis, payable in St. Louis funds. If you consider that they would be rendering you a service by paying your check in this way, then let them pay you a premium when you deposit with them exchange on these central points.

Instead of having us go through this roundabout method of collecting your check, will you not be good enough to make one operation of it by making out your check payable to your bank and asking them to send us, or to give you to send us, this other check on some central reserve point for such amount as you wish to credit on our books?

Assuring you of our appreciation of your business, and thanking you in advance for your co-operation, we are,

Yours very truly,

SIMMONS HARDWARE COMPANY,
H. THOMPSON,
Asst. Treas.

38.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

Mississippi Automobile Co.,
Tupelo, Miss.

GENTLEMEN:

We have yours of 23rd inst. returning to us your checks for $81.89 and $99.96 on the Bank of Tupelo. We note that you say "These checks will be paid in the usual manner when presented in the ususal manner."

On your assurance of this, we are putting your checks through in the regular war. We assume, of course, that you have assurance that these checks will be paid in full because if they are not paid in full they are not paid. It is impossible to liquidate or to pay any obligation for a less amount than the obligation calls for—which is what the banks that have refused to become members of the Federal Reserve System, are trying to accomplish in the passage of this new Mississippi law—the effect of which will be the subsidy to these banks to be paid by you people of the community. An effort is made to make it appear that this charge for the benefit of the local banks, would be borne by us jobbers outside the state. Any business man would recognize, however, that to put the charge on us (for which we are getting no corresponding service) would simply

OSE IN CENTER

increase the cost of our business which would necessitate raising t price which must be paid by our customers.

We trust, as you say, these checks will be paid, and if the Tup Bank will pay your checks on it (which means pay them in fu we shall be glad to continue to accept checks on the Bank of Tupe

If they do not pay the checks drawn on them in full, you w readily understand how we cannot afford to accept them. Not b cause your money is not good, but because your money is in t custody of an agent that will not pay it out in full. In other wor in the hands of an agent who takes, for example, $100.00 of a d positor's money, but will not pay back to him or to us $100.00 wh he calls for it.

Let us put them to a test. We are entirely willing to abide b what they do in this matter.

Very truly yours,

SIMMONS HARDWARE COMPANY
H. THOMPSON,
Asst. Treas.

39.

The following document was returned with and made a part o said interrogatories, and was tendered in evidence by plaintiffs an objected to by defendants on the same ground taken as to the in terrogatories, and said objection was sustained by the court and sa evidence rejected, and plaintiffs excepted and assign error on sa ruling for the same reasons set forth in the foregoing assignment o error number ten.

April 7, 1920

Mr. C. G. Walton,
Tupelo, Miss.

DEAR SIR:

We are returning herewith your check for $200.00. The reaso we are compelled to return this check is that the Federal Reser Bank is not permitted to handle it as the result of an Act of th Legislature of the State of Mississippi, approved March 8th, 192

All the banks we do business with are members of the Federa Reserve System; therefore, we must use this system for the colle tion of our checks or else change our banking connection, and s all of the large banks in this city are members of this system, w would find it impossible to make this change.

As you, no doubt, know, it is the purpose of the Federal Reser System to make your check and all other checks good at par all ov the country, and it is, in our opinion, very much to the interests o the business men of this Country that this be done.

We have estimated that if all of our collections were made o checks on non members of the Federal Reserve System, such as you check, it would entail an annual cost on this Company of $16 000.00.

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Every conservative manufacturer figures into the cost of his product all items of cost; therefore, the above sum would have to be added to the price of our shoes, and no doubt, this amount would be passed along by the retailer to the consumer. We are sure that you will agree with us that the price of merchandise is on a dangerously high level, and you will also agree with us that every economy should be resorted to that would tend to reduce its cost. We, therefore, respectfully request that you favor us with St. Louis, New York or Chicago exchange, or Post Office Money order, in the place of this check.

We trust that you will pardon us for the length of this communication but we want to make our position clear, and we feel after reading this, you will agree that our position is right.

With assurance of our appreciation of your patronage, we remain,

Very truly yours,

FRIEDMAN & SHELBY BRANCH
INTERNATIONAL SHOE CO.
J. R. BOELLCKER,
Cr. Mgr.

(Clipping Pasted On.)

As the result of an Act of the Legislature of the State of Mississippi, approved March 8, 1920, the Federal Reserve Bank in St. Louis is obliged to decline to handle checks drawn on Non-Member banks in Mississippi. If the bank you are doing business with is not a member of the Federal Reserve System, kindly remit in St. Louis, Chicago or New York exchange, or Money Order, and very much oblige us.

40.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

St. Louis, Mo., April 10, 1920.

Mr. F. C. McCaughey,
Tupelo, Miss.

DEAR SIR:

We have your favor enclosing check for $1,966.80 drawn on the Bank of Tupelo, Tupelo, Miss., to cover your account due on the 1st, which we beg to return herewith.

As the result of an Act of the Legislature of the State of Mississippi, approved March 8, 1920, the Federal Reserve Bank in St.,

5eq

Louis is obliged to decline to handle checks drawn on non-par
member banks in Mississippi.

All the banks we do business with are members of the Federal R
serve Bank System; therefore, we must use this system for the c
lection of our checks or else change our banking connection, a
as all of the large banks in this city are members of this system,
would find it impossible to make this change.

As you no doubt know, it is the purpose of the Federal Reserve S
tem to make your check and all other checks good at par all over t
country, and it is, in our opinion, very much to the interests of t
business men of this country that this be done.

We have estimated that if all of our collections were made
checks such as we are returning to you, it would entail an annu
cost on this company of $160,000.00.

Every conservative manufacturer figures into the cost of his pro
uct all items of cost, therefore, the above sum would have to be add
to the price of our shoes, and no doubt, this amount would be pass
along by the retailer to the consumer. We are sure that you w
agree with us that the price of merchandise is on a dangerous hig
level, and you will also agree with us that every economy shou
be resorted to that would tend to reduce its cost. We, therefore, re
spectfully request that your favor us with St. Louis, New York o
Chicago exchange, or Post Office money order, in the place of th
check.

We trust you will pardon us for the length of this communic
tion but we want to make our position celar, and we feel, after readin
this, you will agree that our position is right.

With assurance of our appreciation of your patronage, we ar
Yours truly,

ROBERTS, JOHNSON & RAND
(BRANCH).
G. W. FLACE.

41.

The following document was returned with and made a part o
said interrogatories, and was tendered in evidence by plaintiffs and
objected to by defendants on the same ground taken as to the in
terrogatories, and said objection was sustained by the court and said
evidence rejected, and plaintiffs excepted and assign error on said
ruling for the same reasons set forth in the foregoing assignment o
error number ten.

Louisville, Ky., March 31st, 1920.

Mr. I. L. Jones, Assistant Treasurer,
Mercantile Trust Company,
St. Louis, Mo.

DEAR SIR:

Answering your letter of the 30th, we desire to help in any possible
way to break up the practice of the Mississippi Banks in trying to

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charge exchange. We understand the Branch Federal Reserve Bank at Memphis is sending back all checks with the printed statement of the reason for returning them. If some of these checks come back to you, we would be willing to have you send them to us and we will endeavor to handle the matter directly with the customer. Of course we would not want to take on the job of collecting all our Mississippi items in this way but we would be willing to handle a few of them in a special manner that we believe will be helpful to the cause of par collections.

If you have any trouble with the enclosed check from E. B. Horn, Byhalia, Miss., please advise us or if you desire to return it we authorize you to do so.

Yours very truly,

BELKNAP HDW. & MFG. CO.
J. H. SCALES,
Treas.

42.

The following document was returned with and made a part of said interrogatories, and was tendered in evidence by plaintiffs and objected to by defendants on the same ground taken as to the interrogatories, and said objection was sustained by the court and said evidence rejected, and plaintiffs excepted and assign error on said ruling for the same reasons set forth in the foregoing assignment of error number ten.

Tupelo, Miss., March 23.

Simmons Hdwe. Co.,
St. Louis, Mo.

GENTLEMEN:

We are in receipt of your circular letter of March the 18th concerning our check #38323811 or 81899941 respectively. These checks bear no endorsements, so we presume that no efforts have been made to collect them. The Bank of Tupelo advised that these checks will be paid in the usual manner when presented in the usual manner and there is not necessity for checks to go through the Federal Reserve Bank. It seems therefore, that you can use these checks just as you have always done in the past. This is the way we have paid you our bills in the past year.

We again send you the checks herewith and trust that you will go ahead and use them, and we will appreciate very much if you will make out the statement of our account of what we are due you, and if there is any future orders on file, we wish that you would cancel them. Of necessity, we have to do business with our own Bank, and we have to follow the laws in Mississippi and it is our desire to co-operate with our Bank for these are the ones whom we depend upon.

We also understand that if you do not desire these checks that we may get St. Louis exchange for them for you at ten cents on the

dollar, this is what we understand that you have been paying f collection of our checks, and a number of our friends that we ha been doing business with, as Firestone Tire & Rubber Co. and oth have been allowing us to deduct exchange out of this, if this is yo preference we will be glad to do so.

Hoping this meets with your approval, we beg to remain,

Yours very truly,

MISSISSIPPI AUTOMOBILE COMPANY

43.

The following document was returned with and made a part said interrogatories, and was tendered in evidence by plaintiffs a objected to by defendants on the same ground taken as to the terrogatories, and said objection was sustained by the court and s evidence rejected, and plaintiffs excepted and assign error on s ruling for the same reasons set forth in the foregoing assignment error number ten.

April 13, 1920

Eason & Gaines,
Hernado, Miss.

GENTLEMEN:

As a matter of fairness to our good friends and customers i Mississippi, we have endeavored to make clear the facts and unde lying principles in the new Mississippi law—House Bill 651—whic authorizes the banks of Mississippi to make a charge for payin checks drawn upon them. We enclose a copy herewith for yo information.

We found that, with but few exceptions, the merchants of Miss sippi did not understand the real purport of this bill; and the ex ceptions were usually among those who were bankers as well a merchants and who were willing to have their mercantile interest pay tribute to their banking interests—particularly if that should bring about a similar tribute from all other merchants who did no have banking interests from which they could share in the benefits of the plan.

Our correspondence brings out the fact that very few of the me chants care to take part in any opposition to this movement be cause of a feeling that it would be better for the retail merchants o Mississippi to have their creditors used as an agency for collecting this tax from them and for paying it to the local bankers than t arouse the antagonism of the local bankers by opposition.

While it has been represented that the tax under this law is no greater than has been paid for some time past, that does not seem to us to justify the passage of the law, nor to perpetuate this tax upon the merchants and the people of the state, and prevent them from ever enjoying the benefits which the operation of the Federal Reserve System has brought to the people of other sections of the

country. Having endeavored to make the situation clear to our friends and patrons by asking them to act as our agents in cashing their own checks for us and sending us the proceeds, and having found that many of those who agree thoroughly with us as to the iniquity of the plan are not disposed to take any hand in opposition to it, it seems to us that there is no occasion for us to give ourselves further concern in this connection. We feel warranted, therefore, in simply adjusting ourselves to the situation and allowing ourselves to be used in the way the framers of this law intended that we, and all others who sell goods to the people of Mississippi, are to be used; namely, as a means of collecting from them a kind of tax which the people of others sections of the country no longer have to pay.

We will now send our checks on Mississippi banks for collection through the best available channels, feeling that we have endeavored to do in this matter all that could be expected of us in the interest of our customers. We thank those who have good naturedly helped us to bring out the facts by acting, in one instance, as our agents in cashing their own checks and sending us the proceeds.

We believe this law is aimed directly at the prosperity of the merchants and, through them, of the people of the state, in that it will prevent the reduction in the general cost of living which must have otherwise come about by the operation of the Federal Reserve System, which is designed to make every merchant's check good for one hundred cents on the dollar anywhere in the United States. Under the operation of this law a check drawn by a merchant or farmer in Mississippi and made payable to anyone outside the state, is not worth its face value anywhere there is no way in which the party in whose favor the check is drawn can get its face value.

However, as it seems to be the preference of at least the majority of the merchants in Mississippi to allow this law to stand without opposition, we will adjust ourselves accordingly, having no thought or desire to do anything other than to protect the interest of our friends and help them to enjoy the best service available at the least possible expense.

Assuring you of our appreciation of your business and of our desire to co-operate with you in every way possible to your advantage, we are

Very truly yours,

SIMMONS HARDWARE COMPANY.
H. THOMPSON,
Asst. Treas.

44.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

Craig, William S., Tallulah, Louisiana, Cashier of Tallulah State Bank for nineteen years, or since September, 1902. Federal Reserve Bank of Dallas is the name of the Federal Reserve Bank in the district where witness' bank is located. A representative of the Federal Reserve Bank of Dallas called upon witness and requested him as representative of the Tallulah State Bank to agree to remit at par to the Federal Reserve Bank of Dallas for all checks on said Tallulah State Bank presented through said Federal Reserve Bank. He said if witness did not agree to remit at par that they would take steps to have the checks presented through some other channel and demand cash over the counter. He stated that checks might sometimes be presented at one time for an amount in excess of the cash in witness' vault, in which case if the checks were not paid they would be protested for non payment. Witness offered to remit at the same price that would be charged by the Express Company or the Post-office for transmitting remittances of equal amount and the offer was declined. This representative stated that he knew the banks could not hold out for any great length of time in paying their checks in cash over the counter as it would be a losing proposition to them and they would in time be forced to join the par clearance system, therefore the Federal Reserve Bank would not consider such an offer.

This created the impression upon witness that the Federal Reserve Bank was willing to proceed to any extremities to force their par clearance scheme, and were perfectly willing to force out of existence any banks that did not agree to their demand.

The representative stated that the Federal Reserve was making very large earnings and that the Federal Reserve Bank was prepared to use any part or all of this large earning to force the country banks into their par clearance system therefore it was useless for the country bank to oppose joining the system. These threats forced witness as representative of the Tallulah State Bank to join the par clearance system, reserving the right to withdraw at any time by giving notice. Witness signed because he was forced to do so through fear of injury to his bank; and can best express his feelings at that time by quoting the following paragraph from a letter written by him to Senator Joseph E. Ransdell on September 26, 1919:

"We have been receiving for some time communications from the Federal Reserve Bank at Dallas insisting that we should agree to remit them at par for all checks that they might send us, and the last one of these letters contained the threat that if we would not so remit at par the Federal Reserve Bank would make collections through the express company. We replied to them that we did not feel we should give up a legitimate source of income and that we could see no more reason why we should transfer credit from one point to another without charge than why the express companies

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should transfer merchandise, or the Government issue money orders without charge. They then sent a special representative here to take the matter up with us. This representative told us straight out that if we did not agree to this par arrangement they would turn their checks over to the express company, or accumulate a larger bunch of them than we could probably pay in cash if presented at once, have these presented and protest them for non-payment. We suggested to him that this would entail considerable expense on the Federal Reserve Bank. He replied that the Federal Reserve Bank's earnings had been very large and that they would be perfectly willing to spend a large part of these earnings in an attempt to force the country bank to agree to their demands. We then offered to handle the items at the same price that would be charged by the express company. He replied to this that he felt sure if the express company was used the country bank could not possibly hold out more than three or four months, and would be compelled eventually to agree to their par arrangement. After this kind of argument we, of course, signed the par agreement in exactly the same way that you would deliver your watch if a highwayman pointed a loaded pistol at you and demanded the watch."

Witness signed the par clearance agreement before the Louisiana Legislature passed the Act. Immediately after the passage of the Act witness bank served notice on the Federal Reserve Bank at Dallas cancelling their agreement to remit at par. The latter then presented the checks through the American Express Company. We tendered the agent of the Express Company payment less ten cents per hundred dollars exchange as authorized by Louisiana law but the tendered payment was refused and the agent of the express company returned the checks to the Federal Reserve Bank at Dallas. The Federal Reserve Bank then mailed out from its office at Dallas a "Notice of Dishonor" directed to the drawer and to each endorser of each check, setting forth that the same had been presented and payment at full face value refused. These notices were drawn in the form of protest notices clearly for the purpose of creating the impression that the checks had been protested, and quite a number of our customers who received these notices asked why we had allowed their checks to go to protest. A copy of the notice is attached hereto being one dated June 17, 1921, and directed to Mrs. A. L. Slack, Tallulah, La., Mrs. Slack being the drawer of the check mentioned in said notice. The smallest check that we remember seeing was one of these notices refer to was one for eighty cents. In spite of the criticisms of its methods made by the Supreme Court of the United States, and in absolute defiance of the Laws of the State of Louisiana, the Federal Reserve Bank at Dallas is continuing up to this time to have the checks presented through the express company (even though the majority of these checks have distinctly printed or stamped across their face the words, "This check is not payable to or through any Federal Reserve Bank or its agent"), instructing the agent of the express company to decline to accept payment in the manner provided by Louisiana law and upon the re-

turn of said checks are continuing to send to the drawer and to ea endorser notices similar to the one attached, the very evide intention of these notices being to injure the Tallulah State Ban in the eyes of its depositors and of others who receive checks on it

Cross-examination:

The representative of the Federal Reserve Bank was a Mr. Jen nings, witness does not know his initials nor does he remember th exact date on which he called. Witness tendered payment less ex change according to Louisiana law to R. C. Leeves, Agent Americ Express Company at Tallulah, Louisiana, who refused said tender payment. Witness knows the facts to which he testified of h own personal knowledge as he has personally and as a member o the firm of McClellan & Craig received such notices of dishon through the mails, the envelope bearing a return request to th Federal Reserve Bank of Dallas and being postmarked at Dalla Texas, and the notices bearing a facsimile signature of R. B. Col man, assistant Cashier of the Federal Reserve Bank of Dallas, an has seen hundreds of such notices directed to customers of th Tallulah State Bank.

Witness saw the check for 80¢ referred to in direct examinatio

45.

The following document was returned with and made a part o said interrogatories, and was tendered in evidence by plaintiffs an objected to by defendants on the same ground taken as to the in terrogatories, and said objection was sustained by the court and sai evidence rejected, and plaintiffs excepted and assign error on sai ruling for the same reasons set forth in the foregoing assignment o error number ten.

Federal Reserve Bank of Dallas.

Notice of Dishonor.

Dallas, Texas, 6/17/21.

Mrs. A. L. Slack,
Tallulah, La.:

A check for $1.85, dated —— ——, payable on demand drawn by Mrs. A. L. Slack, on Tallulah State Bk., Tallulah, La. to order of The Modern Priscella endorsed by Massachusetts Tr. Co., Boston, Mass. F. R. B. Richmond, Va. 6/11/21, was presented to the bank on which drawn, and payment at full face value was refused. Under the provisions of the Uniform Negotiable Instrument Act, you are hereby given notice of dishonor, and are advised that you will be held for payment of same, together with all costs, charges, dam ages and interest.

Respectfully,

R. B. COLEMAN,
Assistant Cashier.

46.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

C. D. Waggoner, Norwood, Colorado, Banker.

I was connected with the Norwood State Bank in November, 1919. Norwood is about 500 Miles from Denver, Colorado. Norwood is about 18 miles from the nearest railroad station. I had an interview with a representative of the Federal Reserve Bank relative to par clearance. I was requested to sign a card agreeing to remit at par but after a considerable discussion I declined to sign this card. He said that I was not being fair to our stockholders in taking the attitude that the Federal Reserve Bank would ultimately force us to their terms. I asked him how they would do this and he said that in one instance they had collected enough checks against a bank until they knew they would not have cash enough to pay the checks and they presented them at the window and refused to accept anything but cash and when this was not forthcoming they protested the checks and closed the bank's door. He said that this would happen to us if I did not agree to their terms. I then went into a considerable discussion with him relative to the fairness of our position, stating that we were rendering a service and that we were giving that service at a less cost to the Federal Reserve Bank than they could secure it in any other way, either by messenger, postoffice, or express and he admitted that but said that they intended to compel all banks to remit for checks at par. We made a charge of ten cents for each cash letter regardless of the amount, if they sent us a letter containing ten checks amounting to $5,000.00 we charged ten cents or if there was one check amounting to $5.00 we made the same charge. He admitted that the charge was reasonable enough but that it was an unfair practice. I told him that we would remit at par we have never since made them any charge for exchange because our bank was not large enough to enter into a fight with the Federal Reserve System. I never did sign the formal agreement to remit at par. I asked him for his card which he gave me and I wrote a complaint to one of our representatives in congress and sent him the man's address. I think his name was Thornton. The effect of our sending a bank draft covering the amount of checks drawn on our bank to the holder thereof in the City of Denver or in any other city where exchange is convertible at par is to transfer the funds for which the checks are drawn to Denver with-

out any cost to the holder. This transfers money from our ba direct to the place where the last holder of the check lives with any expense to him. The cost of transferring money from Norwo to Denver by express for each $1,000.00 is $1.35. I have talk to the officers of National Banks as to the advisability of said st banks joining the Federal Reserve System and they said it w unsatisfactory and advised me to keep away from them. A ba situated in a remote section like my bank is cannot do busines the same ratio of expense as a bank in a large city can. T customers of my bank are scattered through the country from on one hundred miles distant. We have for some time followed th custom of drawing drafts either on New York or Denver a governing our action by the size of our balance in either pla using these drafts in remitting for cash letters or letters which co tain checks drawn on this bank. We were notified by the Fede Reserve Bank that unless we discontinued drawing our drafts o New York that they would notify the endorsers of checks which w received or were drawn on us that same was not paid on presentatio but that they had to send to New York to collect; in other wor it would seem that they were making an effort to discredit this in stitution with people who might become holders of checks draw on this bank and thereby give us a lower financial rating than w were entitled to. Inasmuch as the Federal Reserve System is sup ported by the banks of the United States and to a considerable ex tent indirectly by the state banks, why should not their attitude b that of a friend and why should we feel that we are being persecute by the System instead of being aided. The government sends th best authority to assist the farmers, they do all they can to benef the labor union, and might it not be an advantage to the people t the Federal Reserve System would lend some assistance to the countr banks regardless of whether state or national. In connection wit my answer to Direct Interrogatory No. 5, I referred to the entir system of the Federal Reserve Bank and I said his name wa Thornton. In connection with my answer to Direct Interrogator No. 10, the rate in question is the same whether the distance fro my bank to the point to which remission is made is 1,000 miles o 400 miles. If I were to give you the names of the officers of th National Banks who gave me this advice you would not only refe their names but the names of their banks to the Federal Reser Board and they would be persecuted as long as they remained in th banking business and by the Federal Reserve System in particula My bank is now remitting at par for checks sent through the mai to it for collection by the Federal Reserve Bank of its District.

47.

Because the court erred in rejecting the evidence of the witnes hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it wa

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proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

Benditzson, Nathan, 4211 North Sawyer Avenue, Chicago, Illinois. Witness is not engaged in any business at present. On November 14, 1919, he was engaged in general merchandise business at Pierce, Nebraska, and carried his account at the Pierce State Bank of Pierce, Nebraska. He does not recall that he knows the Cashier of the Bank by name. He usually had his dealings with Mr. Frank Pilger who he thinks was president or cashier of the bank. He went into the bank about November 14, 1919, to deposit some money in his account and he noticed a strange man he had never seen before standing at the cashier's counter. Witness was right outside of the window through which the cashier pays money. The cashier or employee of the bank who was on the other side of the window he knew to be Mr. Frank Pilger. Mr. Pilger appeared to be paying out to this stranger a very large sum of money. Witness saw packages of bills and also a large amount of silver money being counted out and put through the window and there was a very large quantity of the money being paid there and it was piled up in packages and piled on the counter. Some of it was in silver money. Witness should judge that there was possibly eight or ten thousand dollars, although he could not say with definiteness what amount there was. His attention was attracted because it was an extremely unusual thing for such large sums of money to be paid out to a strange man in a small town such as Pierce, Nebraska. He thought it very unusual and therefore his attention was attracted. While this money was *behind* counted out another man came into the bank who was a stranger to witness and the former was present while the money was being taken out into an automobile which was waiting. This man had a large pistol which was in his hip pocket. Witness could see it bulging and protruding out of his pocket. Witness did not see him do anything with it while the former was there. He had no knowledge personally as to whom they were or what they were doing except that they were getting what appeared to him to be a very large sum of money from the cashier. After they had left the bank, he asked Mr. Pilger and the latter said that they were representatives of the Reserve Bank. His first impression was that these men being strangers to him and one of they carrying a pistol, that it might be a holdup and therefore he asked Mr. Pilger who they were. When the latter told him that they were representatives of the Reserve Bank he then felt better about it but wondered why they were withdrawing such a very large sum of money from the bank and he was anxious whether or not his money was safe in that bank. The occurrence had the effect of disturbing his mind and making him somewhat anxious about his deposit. When this occurrence happened, he thought it would be best for him to ask Mr. Pilger why these men

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had come in and what they were doing and why this money was being paid to them. He then asked Mr. Pilger about the transaction before he left the bank. Mr. Pilger stated to him that these men were representatives of the Federal Reserve Bank and that they were there presenting checks for payment and that the bank was paying them. After Mr. Pilger explained this to him he determined to leave his account there, because he thought his account was all right there.

Cross-examination:

Witness was four or five feet away from the window through which Mr. Pilger was paying the money to the men. He was standing on the floor inside of the bank, between the door and the cashier's counter. He would describe the man as follows: He was a man of medium size, ordinarily dressed; dark hair and eyes as he remembers although he could not give a very definite description of his personal appearance. The person described as standing at the cashier's window taking a large sum of money is a different person from the gentlemen referred to as coming in the bank while this money was being counted out. This latter was the one who had the pistol in his hip pocket. At the time of the occurrence witness had no personal knowledge whom the persons referred to represented. His only source of knowledge as to whom they were and what they were there for came from Mr. Pilger when witness interrogated him after they left. This was just a minute or two after they left the bank. He did see a pistol as described in his direct examination and when he first saw it it was in the hip pocket of one of these men. Witness was standing behind him and saw the shape of it in his pocket. Witness did not withdraw his deposit nor did he close out his account with the bank at that time. He is still carrying an account with the bank. Witness saw Mr. Frank Pilger who talked to him after the men left.

48.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

Deary, W. A. (Bloomington, Nebraska): Connected with Farmers' State Bank, of Bloomington, Nebraska, in January, 1920, during which month one M. L. Bishop, representing the Omaha Branch of the Federal Reserve Bank of Kansas City, visited the Bloomington bank, and requested its officers to sign a par clearance agree-

ment. Bishop said that, unless this agreement was made, the Federal Reserve Bank would have checks on this bank presented at its window and cash demanded, and would refuse to accept drafts in payment. He said that he was the same Bishop who presented a large amount of checks at the counter of the Cones State Bank, at Pierce, Nebraska. He said there had been some sort of gun play by some representative of the Federal Reserve Bank other than himself in connection with the collections made over the counter at Cones State Bank. He attempted to excuse it on the ground that this special representative was sent there for the purpose of collecting a larger sum of cash from the banks, was inexperienced and nervous and carried guns and guards for protection. Bishop further stated that had he been there himself to make the collection, the incident would never have occurred. He said that he was the one who presented a large bunch of checks at the counter of the Cones State Bank payment of which was demanded in cash. The total amount of these checks called for more currency than the bank had on hand. Bishop seemed pleased with himself over the event. He stated that he refused to accept drafts in payment, and insisted on cash; and that he would pursue the same course with all banks, including Farmers' State Bank of Bloomington, and would present checks at the window by special representatives and demand payment in cash and refuse to accept payment in drafts. He stated that the Federal Reserve Bank would prefer not to clear checks for its customers, as it would cost them the pay of an extra man for every twelve banks, at a salary of $125 per month, but that the Reserve Banks had no option and must clear all such checks at par for their customers, and were not permitted to absorb or charge back exchange to the depositing banks; that the Federal Reserve banks were going to force par clearance, no matter what it cost to do so; and would carry out the policy of collecting cash over the counter by special representatives, regardless of what it cost to do so. Witness' bank proposed to Bishop that, in order to avoid unnecessary expense of this special representative, the Bloomington Bank would either remit at regular rates and keep account of exchange charges with the agreement that if the courts finally decided such charges not lawful, then the Bloomington Bank would refund the aggregate of these exchange charges to the Federal Reserve Bank; or, if this was not satisfactory, the Bloomington Bank would remit at par and keep an account of regular exchange charges, with the understanding that should the court's final decision go against the Federal Reserve Bank, it would remit to the Bloomington Bank the amount of such total exchange charges. Both offers were refused, but cash demands were not made upon the Bloomington Bank until some time in January, 1920.

Cross-examination:

The Omaha Federal Reserve is a branch of the Federal Reserve Bank at Kansas City, Missouri. Witness was not present at Cones State Bank and knows nothing of the incidents in connection

therewith except what Bishop told him while representing the Federal Reserve Bank on said visit to the bank at Bloomington.

49.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

John B. Helpman, Cashier Miners and Smelters Bank, Northport, Washington.

I have been connected with the bank at Northport, Washington, for six years, the first of next January. In the matter of payment of checks for account of the Federal Reserve Bank at San Francisco they sent their checks through the Express Company and the Express Company demanded cash at the window.

The largest amount we were asked to pay at one time was $17,155.21. It was more than we could pay out at the time, or that we ever expected to be required to pay out at any one time in the ordinary run of our business. We considered $5,000.00 a large payment. We telephoned our Spokane correspondent to pay the Express Company in Spokane for the Federal Reserve Bank in San Francisco. The Express Agent at Northport assented to this arrangement, as an accommodation to the Bank, as Express Agent. No subsequent accommodation of this character was extended by the Agent of the Express Company at Northport. He informed us that he had received a letter from the Federal Reserve Bank of San Francisco, objecting to that method of payment and instructing him that he must not do so any more. The Express Company did not object to this method. It was the Federal Reserve Bank of San Francisco that objected. The Federal Reserve Bank instructed the express agent that all subsequent checks sent by them must be paid by the Miners and Smelters Bank at Northport, in cash.

Sometime later, the agent also stated that the Federal Reserve Bank had recalled the letter mentioned in answer to Interrogatory Number 9.

Cross-examination:

The full name of the Bank at Northport, Washington, with which I am connected is the Miners and Smelters Bank.

In connection with my answer to Direct-Interrogatory No. 4, the checks in question were presented on November 24, 1916. Total amount $17,155.21. Cannot answer remaining part of question as Express Company did not turn over remittance sheets. The amount

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of cash in vault in the bank *in* December 31, 1919, was $20,697.80; December 31, 1920, $19,482.22, but the average in American Funds for thirty days, November, 1916, was $6,534.25.

The name of the Express Company agent to which I refer was P. P. Otey. We have no record of the dates upon which checks were subsequently presented by the Express Agent, the number of checks presented in each instance, and the total amount in each instance, because Express Company did not turn over remittance sheets. I wasn't present when the Express Agent received his instructions from the Federal Reserve, and I obtained the information from him.

In connection with my answers to Direct-Interrogatories Nos. 3, 4 and 8, I know the facts to which I testify of my own personal knowledge.

50.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

O. J. Irwin, Loretto, Nebraska, Cashier of Loretto State Bank. Witness was connected with this bank during December, 1919, during which time the Federal Reserve Bank of Omaha, Nebraska, sent some checks or cash items on the Loretto State Bsnk through the American Express Company; when these checks were presented the agent of the company demanded cash in payment therefor. Later in December a party of three claiming to represent the Federal Reserve Bank of Omaha, presented an agreement for the Loretto State Bank, to sign, agreeing to handle all checks from the Federal Reserve Bank at par. At that time they informed us that they were in position to make it very unpleasant for us if we did not sign the agreement. The Party consisted of a driver of an automobile who remained in the car and three who came into the bank. Two of the parties who came into the bank claimed to represent the Federal Reserve Bank, the third party being an attorney and Notary Public from Albion, Nebraska. Upon our failure to sign said card, they informed us they were in position to enforce their demands. We did not sign the card presented at that time and they presented some checks for payment and demanded payment thereof in cash. The amount of said checks in the aggregate was $11,197.69. The dates of said checks indicated that they had been held before presentation for about seven days. We offered to pay said checks with a draft on an Omaha bank where we kept our reserve fund but they refused to accept it and they informed us that if not paid in cur-

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rency they would protest every check immediately. They brou a Notary Public with them for the purpose of protesting said che and they informed us that if we continuously refused to sign s agreement they were in position to say that we could not borro "damn dollar" at any national bank. After all these threats w made, we signed the agreement to prevent the checks of our be protested and avoid the necessity of keeping a larger amount cash on hand, than had been our custom when checks were presen through the mail. One of the many reasons why we were indu to sign said par clearance agreement was in order to save the expe of protest fees on a large number of checks presented. About checks were at that time presented for payment in currency for wh the protest fees would have amounted to about $600.00. After signed the par agreement they accepted our drafts on the Om Bank in payment of the checks. Our signature to the par agr ment was not voluntary but they had us in a position we could refuse without embarrassing the bank.

Cross-examination:

In connection with my answer to Direct Interrogatory No. 3, name of the Federal Reserve Bank of which the Omaha bank in qu tion is a branch is the Federal Reserve Bank of Kansas City; t name of the express agent who presented the checks in question A. C. Holmes. I did not know the name of the party who remain in the car and believed the name of the party representing the Fe eral Reserve Bank of Omaha, was a Mr. Jones, and cannot recall t name of the other party now. This conversation occurred on about Dec. 18, 1919. There were two hundred forty-three che of various amounts making a total of $11,197.69. Our draft ab referred to was drawn upon the Packers National Bank, Oma Nebraska.

We have just recently asked to have our name removed from t par list from the Federal Reserve Bank but we occasionally get a f checks direct from them, but we have not made a charge for mitting for them, nor have we charged the Federal Reserve Ba since we signed the par agreement in question. I was present person at the time the events to which I testify occurred. I cann give the exact amount of each check at this time but could secu a list of the same from the bank's record.

51.

Because the court erred in rejecting the evidence of the witn hereinafter named taken upon written interrogatories duly execut and returned into court, said evidence having been duly tendered the trial and objected to by defendants on the ground that it w proof of res inter alios acta and therefore irrelevant, and said obje tion sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible f the reasons set forth in the tenth assignment of error, which

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brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

W. H. Kuenzi, Clyman, Wis. Cashier of Farmers State Bank of Clyman, Wisconsin.

Early in 1920 we received letters from the Federal Reserve Bank of Chicago relative to the so called par clearance; in none of our answers did we agree to remit at par, and we continued making our regular exchange charges on the cash items sent by them to us for collection. Shortly after the local express agent presented checks drawn on us over the counter and demanded cash in payment. (See copy of letter written by us to them at this time herewith attached.) This continued until the totals of checks so presented amounted to quite a sum when the express agent asked for drafts in payment of same instead of cash. Shortly after this method of collecting was abandoned, due we understand to the fact the express agent refused to handle cash collections by reason of personal risk involved. On May 21st, 1921, shortly after our opening hour in the morning an agent of the Federal Reserve Bank of Chicago called and presented checks drawn on us amount- to over six thousand dollars. Inasmuch as this was about twice the amount of cash usually carried, we were unable to pay them. The agent however offered to take a draft in payment providing that thereafter we would arrange with our correspondent to remit at par in Chicago exchange for all items cleared thru the Federal Reserve Bank. He also related how checks were collected other than thru the express agent appointed. As we could not afford to have our customers' checks presented that morning dishonored, we had to follow the course as outlined by him, and since then our correspondent remits for items drawn on us forwarded from the Federal Reserve Bank.

There are two employes in said Bank, cashier and clerk.

The amount of its deposits is as follows:

Prior to war a range of approximately	from	$130,000	to $150,000.
During time of greatest inflation	"	$200,000	to $240,000.
At present	"	$140,000	to $150,000.

While deposits were abnormally high during war time inflation revenues derived from exchange charges did not play such an important part in the earnings. But before the war, and above all at the present time, with deposits down to pre-war times, and chances for losses greatly increased owing to the uncertain financial conditions existing, exchange revenues are of very great importance. The usual and ordinary rate of exchange made by my bank are as follows:

Amounts up to $100 5¢ and 10¢ per letter, depending somewhat on the amount of items; above this, one tenth of one per cent; large amounts 75¢ per thousand. The rate per $1,000 on currency sent by express from Clyman to Chicago is 55¢ plus 3¢ war tax, making total of 58¢ per $1,000.

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Cross-examination:

With regard to my answer to Direct Interrogatory No. 2, I came in contact with Mr. Nolan agent of the Federal Reserve Bank of Chicago. I knew the facts to which I testify of my own personal knowledge. The precise amount of exchange charges collected during the past three years is as follows:

1919, $732.15; 1918, $546.65; 1920, $410.30.

The following is a summary of the bank's income and deductions:

1919.

Income, $7,276.22.
Deductions, $4,290.61.

1920.

Income, $9,692.39.
Deductions, $5,729.22.

As to my answer to Direct Interrogatory No. 12, I know the facts to which I testify of my own personal knowledge.

52.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

A. L. Norton, Allen, Michigan, President, Allen State Savings Bank*s*, has been connected with this bank ten years on the First of August, 1921, as director, and has been president since January 13, 1914. This bank was placed upon the par list of the Federal Reserve Bank of Chicago by agreement but the bank does not expect to continue to operate under said agreement. It never agreed willingly to do so and we felt that we could no longer submit to it. We advised the Federal Reserve Bank on August 18, 1921 that on and after September 1, 1921, we would make regular exchange charges believing that under the recent Supreme Court decision they would be obliged to remove us from their par list and allow us exchange. They refused to assent to this arrangement and renewed their threats to pursue the same methods of collections which had been threatened and employed before we signed our par clearance agreement. They wrote witness a letter on that subject, as follows:

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Federal Reserve Bank of Chicago,
79 West Monroe Street.

August 19, 1921.

Mr. A. L. Norton, President,
Allen State Savings Bank,
Allen, Mich.

DEAR SIR:

Receipt is acknowledged of your letter, dated August 18th, calling our attention to the decision of the Supreme Court of the United States regarding the collection of checks of non-member banks, and informing us that after September 1, 1921, you will resume the practice of charging exchange at the rate of 1/10 of 1 per cent on all checks sent to your bank for collection and remission.

The Supreme Court's decision was rendered in a suit brought by a group of non-member banks to enjoin the Federal Reserve Bank from collecting checks drawn on the country banks by having agents demand payment in cash in cases where the country banks declined to remit at par, the complaint alleging that the Federal Reserve Bank undertook the collection of such checks by presentation and demand of payment in cash with the intent of injuring the banks on which the checks were drawn. As the issue before the Supreme Court was merely whether, as a matter of pleading, the plaintiff's bill of complaint stated a cause of action, the decision of the Supreme Court is not a final determination of the litigation and the case will now be sent back to the District Court of the United States for the Northern District of Georgia for trial upon the merits.

The opinion of the Supreme Court does not deny the legal authority of the Federal Reserve Bank to collect checks on non-member banks by making presentation thereof at the counter, but holds merely that non-member banks may be entitled to relief if they can prove that the Federal Reserve Bank malevolently intends to accumulate checks and present them in an oppressive manner for the sole purpose of injuring the banks upon which the checks are drawn.

In the opinion of the Counsel for the Federal Reserve Board, the Supreme Court's decision does not interfere with the present check clearing functions of the Federal Reserve Banks and those banks may continue, as heretofore, to collect checks drawn upon banks which are listed upon the par list.

Federal Reserve Banks are prohibited from paying exchange or collection charges to a bank for collection and remission of checks and as all banks in our district are included in the Federal Reserve par list, we must continue to collect checks drawn on your bank at par.

We prefer to continue to send your checks direct to you for remittance at par in Chicago or Detroit exchange, or, we will accept in payment shipments of currency at our expense. If it is not convenient for you to remit in Chicago or Detroit exchange, we shall

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be pleased to send your checks to your Michigan correspondent
you will arrange to have it remit to us on receipt at par in Chica
or Detroit exchange. Unpaid items would be subject to retur
within a reasonable time.

We hope you will reconsider your decision because if you will no
remit at par for the checks we are sending to you, or arrange to hav
them collected through one of your Michigan correspondents at pa
we will be obliged to make other arrangements to collect payme
in full.

Kindly let us hear from you further, using the enclosed stamped
envelope for your reply.

Yours truly,

(Signed) WM. C. BACHMAN,
Controller of Collections."

If the Federal Reserve Bank of Chicago inaugurates the system of presenting all checks coming from them for currency over the counter of this bank it will curtail our earnings and be injurious in other ways.

It causes us to keep large sums of money in our vaults which could be otherwise deposited with correspondent bankers where it would draw interest. It increases our risk of hold-ups and burglary. It causes embarrassment, as their agent takes no pains to conceal the fact that she is making collection in an unusual manner. This causes wonderment on the part of depositors.

As between having to pay all or a large proportion of checks drawn on deposits in this bank in currency over the counter and remitting for the same without any charge of exchange, it would be the lesser of two evils as a permanent arrangement to remit without exchange charges, and would be better for the bank to forego exchange charges than subject itself to a permanent method of paying practically all checks drawn upon it in currency over the counter. As between the two courses we should probably have to surrender to the par clearance campaign.

On or about the 7th of September 1921 a representative of the Federal Reserve Bank of Chicago called on us, the Allen State Savings Bank, and tried to get us to still remit to them at par for all checks, but we refused. He said that if we would not do so, he would appoint an agent who would demand currency over the counter each day and that it would be embarrassing to us to have collections made in that unusual manner. I offered to act as their agent at 1/0 of 1%, if they would accept Chicago Exchange in payment. This he refused to do and appointed a girl, whom they pay several times as much as I would charge. I asked why their agent could not take Chicago Exchange in payment, he replied that she would not know whether or not we had money in Chicago to meet it.

Cross-examination:

The gross and net profits of the Allen State Savings Bank were as follows for the years noted:

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1918, gross, $3,578.70; net, $1,578.66;
1919, gross, $4,181.13; net, $2,101.54;
1920, gross, $3,601.90; net, $1,019.55.

The bank paid 6% dividends in 1918 and 1919 and no dividend in 1920. During all of these three years exchange charges were carried in one item. The city correspondents of this bank are Continental and Commercial National Bank of Chicago and the National Union Bank of Jackson, Michigan. We have an agreement with them under which they give us credit at par for checks sent them, there is no written agreement to this effect, nor is there any specified balance to be kept with these banks as a condition to par credits.

We deduct exchange from the Continental and Commercial National Banks before remitting for checks drawn on our depositors and sent to us for payment. The National Union Bank of Chicago is not an active account. The few checks they send us are charged direct to our account.

53.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

Nower, N. L. (Winsboro, La.): Witness is cashier of the Franklin State Bank and Trust Company since April 16, 1917. About two years ago, the first representative of the Federal Reserve Bank at Dallas approached the witness on the subject of par clearance, and about a year ago the last one of these representatives approached witness on that subject. Both of these representatives unknown to witness, and their names are not remembered, but they both claimed to represent the Federal Reserve Bank of Dallas, Texas. Witness did not sign the par clearance agreement; refused because his bank wanted exchange on all of its mail collections, whether coming from the Federal Reserve Bank or any other bank. Each of these representatives persisted in their efforts to compel witness to sign par clearance agreements for his bank but he flatly refused. These representatives stated that witness would eventually have to do it; that it was not optional with him, and that his bank had been placed on the par list; that we had no discretion in the matter and would eventually have to par all checks drawn on us. They insisted that our bank was on the par list and would eventually have to sign up, regardless of our wishes, and if we refused payment of the checks as demanded, we would have trouble with our customers. The

items would be presented over the counter for payment in currency and would come in such volume that we would find it out of the question to keep enough cash on hand to pay them, to say nothing of the expense involved in having cash shipped to us. They pressed the point that our refusal to sign would result that items would come in in such amounts that we would find it both difficult and expensive to keep enough currency on hand; and for that reason, and for the further reason of the complaints of our customers, we would eventually be compelled to sign the par clearance agreement. Such a course of business would interfere with the revenues and the conduct of business of witness bank. These representatives threatened to have the checks protested, and that would cause dissatisfaction among the customers of witness' bank; which would finally cause it to change its point of view. Witness still refused to sign, but he afterwards parred their mail collections until the State of Louisiana passed an Act giving them the right to charge exchange. After witness bank ceased to par their mail items, these items from the Federal Reserve Bank were presented for payment through the express company. Witness does not know how long they were allowed to accumulate, but frequently there were two or three collection letters presented at one time, bearing different dates, and sometimes as many as four. These checks were never presented at the bank more than twice a week, and sometimes only once a week. They were never presented daily, and sometimes went as much as four days and even longer. The aggregate amount of the checks thus presented frequently ran into the thousands. When thus presented, witness bank declined to pay them because the agents would not allow the deduction of one-tenth of one per cent exchange. These checks were then returned with the following indorsement on them: "This item has been presented to the bank on which it is drawn for payment at full face value, without deduction, and has been refused by the bank because a deduction to cover exchange was not allowed. Federal Reserve Bank of Dallas." Under this indorsement these checks were returned to the customers of witness bank or to the bank sending them to the Federal Reserve Bank, as the case might be, and afterwards many of them were returned to the drawers of the checks. Customers thus having their checks returned complained furiously, but after an explanation from witness, they usually became reconciled. Witness' bank cross-stamped their checks as follows: "This check is not payable through any postmaster, postoffice, express company, Federal reserve bank, or its agents." Witness usually obtained the consent of the customers of the bank before cross stamping checks as above stated. The Federal Reserve Bank did not observe the limitations of this cross-stamp, but continued to receive such checks regardless thereof; but as a result of this stamp, the Federal Reserve Bank did not get as many of the checks on witness' bank as they did before, and the amount presented to the Federal Reserve Bank after such cross-stamping decreased. Witness bank forwarded paid checks presented through the Federal Reserve Bank at par, and did so until the Louisiana Legislature passed a law giving banks in that State the right to

charge exchange. This remittance at par was forced upon witness' bank. It certainly was not voluntary. The amount of revenue derived from exchange on cash items amounts to a substantial sum for the country bank and witness' bank would suffer a loss of these revenues if it is compelled to conform to the demand of the Federal Reserve Bank and remit at par. The refusal of the bank to pay checks when presented and exchange charges refused was the result of the course of conduct of witness' bank in the progress of the warfare between the Federal Reserve Bank and the witness' bank on the subject of par remittance. It certainly tends to injure the reputation and credit of a bank to have checks drawn upon it against valid credits of the drawers returned as dishonored and unpaid. Witness arrives at this conclusion because he had so many complaints from this source, and, in some instances, lost accounts. Such a course is injurious to the credit and business of the bank and bankers and business men generally know it. Witness feels sure the Federal Reserve Bank knows it, and, realizing this result, the Federal Reserve Bank employs it as one of the means used in the effort to compel witness' bank to agree to remit at par. As a matter of fact, a small country bank cannot continue to conduct its business successfully and profitably and be at all times prepared to pay all checks drawn by all or a large percentage of its depositors in currency over its counters, and thus be deprived of the customary revenues charged for the service of transmitting the proceeds of such checks to other places. If such a course of dealing is extended over any great length of time, witness does not know that it would drive such a bank out of business altogether, but it certainly will deprive it of a legitimate source of revenue; it would greatly increase the amount of cash reserve to be carried in the vaults; and would keep a constant flow of cash coming from correspondent banks much more than is ordinarily required, and, in this way, the lending power of the bank would be curtailed.

Cross-examination:

As nearly as witness can remember, for 1918, the gross profits of the Franklin State Bank and Trust Company, of Winsboro, La., were about $20,000, and the net profits about $7,500. For 1919, the gross profits were about $35,000 and the net profits at $17,500. For 1920, the gross profits were about $47,000, the net profits, about $17,250. 1918 was before the increase of the capital stock of said bank from $20,000 to $100,000, and before its depositors had grown as they were in the latter year. In 1918, the bank paid no dividend. In 1919, the bank paid $20,000 in dividends, of which $12,500 was paid from a surplus account, and $7,500 from the undivided profits of the bank. In 1920, the bank paid $12,000 in dividends, which was 12 per cent on its capital stock. During these years, said bank carried its receipts from exchange in one item on its books. The city correspondent banks of the Franklin State Bank are the Chase National Bank of New York, Whitney Central National Bank of New Orleans, Hibernia Bank and Trust Company of New

Orleans, Marine Bank and Trust Company of New Orleans, City Bank and Trust Company of Natchez, Mississippi, Britton & Koontz of Natchez, Mississippi, and Central Savings Bank and Trust Company, Monroe, Louisiana. Witness has an unwritten agreement with these correspondents to par items sent for credit. The Franklin Bank maintains a sufficient balance with them to par such items but have no written agreement to do so. The Franklin Bank tries to maintain a sufficient balance with these city correspondents to justify this service, but no specific amount of balance is required with the larger banks handling the bulk of our collections we frequently have balance running all the way from $20,000 to $100,000 which seems to satisfy them. Witness bank deducts exchange, but remits to its correspondent banks for checks drawn upon it by its depositors.

54.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

L. C. Nunn, Columbia, Cashier of the Citizens Progressive Bank of Columbia, Louisiana.

I have been connected with the Citizens Progressive Bank of Columbia; I have been visited by three representatives of the Federal Reserve Bank with reference to agreeing to make remittances through the mails at par.

Three different representatives of the Federal Reserve Bank of Dallas, Texas came to me on three different occasions. On the first occasion the representative of the Federal Reserve Bank tried to get the Citizens Progressive Bank, of which I am cashier, to sign up an agreement to par with the Federal Reserve Bank of Dallas, Texas. This I refused to do. On the second occasion the representative of the same bank came back to see me and again tried to get me to sign up an agreement to par. When I refused he presented an accumulation of eight or ten days' checks which checks totaled close to $8,000.00 and demanded the cash. At that time I signed a sixty day agreement with this representative, but it was only after this representative had demanded the cash for the checks he held and I was practically forced to sign this agreement or close the doors of the bank. On the third occasion the representative of the same bank called to see me concerning the same matter. I had cancelled our sixty day agreement to par before this last visit and after the Legislature of Louisiana had passed an act prohibiting the Federal

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Reserve Banks from forcing state banks to par. At that time I signed a thirty day agreement to par after being forced to do so.

The first representative proposed to send the checks here by express and have them collected through the express office.

The second representative presented about $8,000.00 worth of checks and refused to accept exchange for them and demanded the cash, unless I would sign the par agreement with him.

The third representative threatened to writ our customers that our bank would not pay their check dollar for dollar and that we were asking for a discount on their checks.

A representative came to see me on three different occasions, but I do not remember the name of either of them.

This third representative also stated that he was here to appoint a collecting agency in the event that we did not sign another agreement to par.

The last representative did not bring any checks, but the second representative brought about $8,000.00 worth of checks with about eight different letters indicating that these checks had been piling up and held for about eight days, at least.

I finally signed the agreement to remit at par, because of the threats that had been made by these representatives which we knew, if carried out, would injure our business and cause our customers to become dissatisfied and for the further reason that we would have to keep on hand a large amount of cash to pay the checks that would be presented by the Federal Reserve Agents.

The methods threatened to be used against me would have injured my business, because if the majority of our customers, who are country people, had received such letters as the Federal Reserve representative threatened to writ, thy would not hav understood why their ative threatened to write, they would not have understood why their lost customers and depositors. And for the further reason that if a collection agency had been appointed as threatened it might have caused our customers to lose confidence in our bank, as they would not have understood the situation and reasons therefor.

These agents declined to accept payment of checks presented by them in the form of bank drafts drawn on my correspondents before I signed the par agreement.

The last representative did not bring any checks with him. The second representative brought the checks and after I signed the agreement to par he accepted exchange for the checks.

I can think of nothing else except that the second representative told me that all of the banks in the State of Louisiana in the 11th, or Dallas, District had signed an agreement to par except three. This I afterwards discovered to be untrue as I personally talked to officers of five or six other banks that had not signed up at that time.

Cross-examination:

I refer to the Federal Reserve Banks of Dallas, Texas. I do not remember the names of the representatives, except that it was in the late summer and fall of 1919.

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In connection with my answer to Direct Interrogatory No. 7, I do not remember the name of the representative and the date upon which he came to see me.

I can give the total amount of checks presented by the second representative which was $7,270.50 and the date on which they were presented as October 10th, 1919. I have refreshed my memory from my bank records and am now able to give the amount of the checks as they were just stated and the date which they were presented. The first visit of the Federal Reserve representative was about August or September of 1919 and the second visit was on October 10, 1919 when the checks were presented to me for payment. The third visit was some time later.

The drafts in question were drawn upon the Citizens National Bank of Monroe, Louisiana, now consolidated with the Ouachita National Bank of Monroe, Louisiana.

My bank is now remitting at par for checks sent to it through the mails for collection by the Federal Reserve Bank of my District

55.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

Paxton, C. B. (Ashland, Ky.): Witness was road agent for the American Railway Express Company, at Ashland, Kentucky, on July 1st, 1918. The local agent at that point was receiving quite a number of collections issued against the Farmers and Merchants Bank by the Cincinnati Branch of the Federal Reserve Bank. The agent was unable to promptly make all of these collections on time and called witness, on several occasions, to assist him in handling them. Cannot state how many he handled. The method of collection was the regular form of collection used by the American Railway Express Company for the collection of notes, drafts and other papers. In this case, the checks for collection from this bank were placed in a collection envelope, sent to the agent at Catlettsburg, Kentucky, with instructions to him to collect the face value of these checks in money and return to the Federal Reserve Bank at Cincinnati. The amounts of these collections varied considerably, some being small and some large, and witness is not in a position to state what the average amount was without the record at Catlettsburg. Federal Reserve Bank issued instructions by circular letter that was enclosed with each collection. Does not remember the exact wording of these instructions; but the sum and substance of them was

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that the agent would collect in cash only, and if payment was refused on any check, it would be turned over to a notary for collection. During the controversy between the Farmers and Merchants Bank of Catlettsburg, and the Federal Reserve Bank, the former stamped a good many of their checks payable in cash or exchange at their option. Several of these checks were received for collection during the time they were handled by the American Railway Express, and its agent accepted drafts for the value of these checks and so stamped and returned them with the money received for the others. Witness handled only one collection wherein any of the checks had been stamped "Payable in cash or exchange," and in this one case, the agent accepted draft to cover. Does not remember whether this was a draft on Cincinnati or New York. Extra help was necessary at Catlettsburg on more than one occasion in handling these collections, not caused as much by the amount of the collection as by the fact that the Farmers and Merchants Bank paid in small bills and to a great extent in silver coins. Witness went to Cincinnati and called upon the Cincinnati Branch of the Federal Reserve Bank in answer to a complaint received through the General Agent J. W. Dale, of Cincinnati. In company with Dale, witness called at the branch bank, but does not remember the names of the parties conferred with. These parties could not give any definite length of time as to how long this manner of collection would continue. Inquiry on this point was made because the force at Catlettsburg was small, business there not being very heavy; and if these collections were to be continued, it would be necessary to employ additional help for a part or all of the time in order to properly handle the same. No definite information as to the length of time this method would continue was given at this interview. It was stated that the bank at Catlettsburg, and one other bank in the State of Kentucky, probably at Harlan, Kentucky, were the only two banks the Federal Reserve Bank was having trouble with as to the manner of clearing their checks. From this interview, it appeared that the Federal Reserve Bank wanted the Farmers and Merchants Bank to clear their own checks at par, which the latter bank refused to do, and it was for this reason these collections were being sent by express.

Cross-examination:

One of the officers or agents of the Federal Reserve Bank of Atlanta was present at the conference in Cincinnati. The only people there were supposed to be connected with the Cincinnati Branch Bank. The instructions referred to were on a mimeographed form, and one of them accompanied each bunch of checks. Do- not know who printed them or had them printed. Does not know the names of the representatives of the Federal Reserve Bank present at this interview.

56.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed

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and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

Dale, J. W., #3356 Park Ave., Cincinnati, Ohio, General Agent for the American Railway Express Company, Cincinnati, Ohio, since July 1st, 1918.

In the Spring of 1920, in company with C. B. Paxton, Route Agent of this Company stationed at Ashland, Kentucky, witness called on the Cincinnati branch of the Federal Reserve Bank of Cleveland in their offices in the Union Trust Building, Cincinnati, Ohio, and conferred with L. W. Manning and with B. J. Lazar, both connected with the bank mentioned. The interview was to determine what additional arrangements, if any, would be necessary if collections were to be continued through the Express agency at Catlettsburg, Kentucky for checks on the Farmers & Merchants Bank of the city, to determine if these collections were to be continued and for what length of time. No definite answer could be given by the bank officials.

This inquiry was made to determine whether the Express Company continue the practice of collecting such checks at the Catlettsburg, Kentucky agency, and to make arrangements for such collections there if it was found necessary for it to handle same. The amount of work involved upon the Express Company's limited force at Catlettsburg in collection of these checks and the risk involved therein would have to be provided for by additional help if continued. No specific date could be set for discontinuance of these collections through the American Railway Express Company pending the bank's arrangements for an agent of their own at Catlettsburg or notification by the Farmers & Merchants Bank at Catlettsburg that they would commence the practice of redeeming their own checks at par.

Interview was held with L. W. Manning and B. J. Lazar of the Cincinnati branch of the Federal Reserve Bank of Cleveland, Cincinnati, Ohio. To the best of witness' knowledge and belief no officer of the Federal Reserve Bank of Atlanta was present at the interview. Interview was held with attorney from Catlettsburg, Kentucky, name not now recollected, who was representing the Farmers' and Merchants' Bank of that city. This took place approximately three months ago.

57.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and one of my guests was one A. D. Fairly. I don't know what re the trial and objected to by defendants on the ground that it was

proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

A. Pohlman, hotel business, Pierce, Nebraska.

I was conducting a hotel in Pierce, Nebraska, in December 1919, and one of my guests was one A. D. Fairly. I don't know what relation he had to the Federal Reserve Bank at Omaha, except he was collecting the checks here, and I don't know exactly how long he was here, but he come just before the first of January and he left, if I am not mistaken, about the first of February in 1920. He came in 1919, the last part of December and left somewhere right after the first of February or thereabouts.

After he had been with me for about a week, I received a guest by the name of J. C. Bryan. He was registered from some little town in Kansas, I forget the name of the town, but he makes his headquarters at Kansas City because he sent me a letter and I sent his laundry there and he left his forwarding address at Kaiserhof Hotel, Kansas City.

I observed Mr. Fairly and Mr. Bryan in the lobby of my hotel at the same time. When Bryan first come, they did not seem to recognize each other. They held conferences with each other in Mr. Fairly's room. In the evening when—Bryan came in the afternoon—and I took somebody upstairs and they were both in Fairly's room. I know because the door was partly open and when I took somebody up there his room was right straight in front of the hall. After that they associated with each other considerably.

Mr. Bryan said he was starting a national bank here, or was going to start a national bank at Pierce. He conferred in my hotel, mostly with farmers that I seen. I don't think he succeeded. He left here sometime in February. I don't know just when it was, but it was a week or two after Fairly left. He left some of his clothes and told me he would be back in a week or two and finish it up, but he never came back and he asked me to send his stuff and I sent it to the Kaiserhof Hotel at Kansas City.

Cross-examination:

The names of the people to whom I refer are Florian Fuchs and Mike Widhalm, and he had several of them in there I did not know. Those are the only two that I know and they brought several others in there and they had their conferences in the parlor of the hotel.

I know the facts to which I testify of my own personal knowledge. I seen it right there at the hotel; nobody had to post me on that. I know the facts from seeing the statement in the paper; outside of that I don't know anything about the Federal Reserve Bank. He claimed to be representing the Federal Reserve Bank at Omaha, but he did put in a good many calls to Kansas City so he must have

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worked out of there the way it looked to me. I know that to be a fact.

The fact of it is Mr. Fairly told me what he was doing and asked me which would be the most likely people to see to get the thing started, and I referred him to Florian Fuchs and Mike Widhalm. No sir, I was not present at the conferences; I seen them from the outside. I saw their door was open when I took somebody upstairs.

58.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

A. J. Mastalir, Pierce, Nebraska, assistant cashier of the Cones State Bank. I was connected with the Cones State Bank during November 1919.

Two years ago on or about the 14th day of November, 1919, Mr W. S. Lower and whom I afterwards found out to be Mr. M. L. Bishop, and a woman and a man drove up side of the bank, Mr Lower and Mr. Bishop came into the bank and Mr. Lower said "We have a few checks here we would like to have you cash" and presented several checks one at a time and I paid them one at a time and when I thought I was all through paying checks Mr. Lower then stated with a smile that he had one more check that he would like to have me pay, and presented a check for $30,100.96. I said to them this was more than we were required to have in our vault by law and all they did was to smile. I went back to the draft register and wrote a draft for this check and offered it in payment to Mr. Lower and he refused to accept it, stating that they had to have legal tender. I said to them "There is your draft and I have the check" upon which this gentleman that I found out afterwards to be Mr. Bishop reached down into a grip and pulled out a revolver and passed to back of Mr. Lower who put it into his hip pocket and I thought that I was going to be held up and Mr. Bishop replied "do you want to take that stand," upon which Mr. Lower stepped out of the bank over to the car and called in a stranger to me. I then went back into what we call the back room and consulted with Mr F. W. Steinkraus, the cashier. While we were in the back room conferring, Mr. Lower and Mr. Bishop came back into the room where we were. We were pretty much embarrassed over not having enough money to meet this check, and when they came in they noted our embarrassment and one of them said "Why don't you sign a par card, avoid this embarrassment and keep your money." Either Mr

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Steinkraus or I told them that we would not sign a par card, that that would be left to Mr. Cones who was out of town at that time. They then told us that they had to have the money right off; that they did not have to wait over five minutes to get their money, and insisted that we get the money to them at once, on which Mr. Steinkraus asked them if they had been at the other banks and they stated that they had not and told us that they might allow us, but did not have to, to go over to the other banks and get some money, but they would not allow us to go out of town. Mr. Steinkraus then asked them what was the aggregate of checks on the other banks and they would not tell him, and said if you go over to the other bank to get money be sure and tell them to be mighty careful as to how much they let you have as we have a large amount against them and they might be sorry for what they let you have. Mr. Steinkraus then stepped out of the bank to see about raising some money. On his return they asked him what he was going to do about the check and he said "We are going to pay it," which seemed to be a disappointment to them and again stated "Why not sign the card and keep your money," stating that if we did not it would be only a short time before they got us any how, saying that the government has plenty of money and would get us if it took them fifty years. Mr. Bishop then stated that we could not hold out against par clearance and have government men call on us as they did; that our customers were going to get suspicious and we were going to lose some business. He said he had any number of bankers tell him after they signed the par clearance card that they could not have the Federal Reserve men call on them in the manner they had as their customers would get suspicious and might ruin their banks, which he thought would be our fate. I then started in to pay the money on the check and while I was paying the money; while I went into the vault to get the money Mr. Mallory our accountant, happened to step back into the back room and got to visiting with these men. I heard Mr. Lower tell Mr. Malory that Mr. Bishop was a deputy United States Marshal, hard boiled and armed; that he helped to run down robbers in Kansas. On my return into the back room with part of the money, I tendered to them the count and Mr. Bishop told me that he cleaned up the state of Kansas, all except one little banker in a country town that held out against par clearance and that he told him that the government would start a national bank in that town and drive him out of business, and that Bishop himself would start a national bank in that town and was going to stick to it till he drove this country banker out of business and that might be what would happen here. The paying of this check took from ten in the morning until a little after two in the afternoon, and Mr. Steinkraus, the cashier, had to take a trip to Norfolk in an automobile to get enough money to pay them. I did not even take time to go to dinner and was afraid to until after I had gotten through with them. Every time I brought out a package of $500 I counted it and demanded that they count it, and played for time asking questions and so on so that Mr. Steinkraus could get back with the money before I would get short or something awful happen to me. Mr. Steinkraus finally

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got back and I was able to pay them in full. During the course of paying this money I noted that these checks had pencil marks and figures on them and Mr. Bishop showed me that they had protest papers prepared for every one of these checks and would be able to protest them in a moment's notice. After paying them the money Mr. Bishop stated that we still might as well sign the par card and they would give us our money and take a draft for the checks, and I told them I did not care to do it. They picked up their money, put it in bags and some of it in a grip and Mr. Lower then pulled out a revolver out of his hip pocket and placed it in the side of his coat pocket leaving the larger portion of it exposed in which manner they left the bank, stating they might see us again. Lower and Bishop drove up in a motor car and came into the bank and presented several checks for payment presenting them one at a time, and I paid them one at a time.

These checks were relatively small amounts but after they had been presented and paid a check for a large amount was presented immediately following the presentation and payment of the smaller checks. The amount of the larger check was $30,100.96. I tendered payment thereof in a bank draft drawn on the United States National Bank of Omaha and payable to the Federal Reserve Bank. Messrs. Lower and Bishop did not agree to accept said bank draft in payment of said large check; they refused to accept the draft absolutely and said nothing but legal tender would go. They grinned and noticed that I was embarrassed and tried to embarrass me as much as possible. Their attitude was threatening and when I stated that here is your draft and I have got the check Mr. Bishop reached down in a grip and pulled out a revolver passing it around back of Mr. Lower to Mr. Lower who placed it in his pocket and said, do you want to take that stand?

I disclosed embarrassment at their refusal to accept the bank draft on Omaha in payment of said check. I was embarrassed because I did not have enough money to pay the check and it was more money than we were allowed to carry, and the gun and their attitude. I did not have enough currency in the bank to pay this large check, so I consulted with Mr. Steinkraus, in the back room of the bank; before I finished my conference with the cashier, Lower and Bishop came into the back room with me and the cashier.

One of these men said when he entered the room, "Why don't you sign the par card, avoid this embarrassment and keep your money because the government is going to get you anyhow sooner or later." In reply to his demand either Mr. Steinkraus or I told him we would not sign the par card, that that would be left to Mr. Cone the president of the bank and he was out of town. The president of the bank was at that time in Omaha, Nebraska.

The cashier went to the other banks and got as much money as they thought they could spare him, hired an automobile and made a trip to Norfolk, about 15 miles from Pierce, and got $12,000 currency which he thought would tide all three of the banks over through the holdup. They said out of courtesy to us that they would allow us to go to either of the other banks to get money but they

would not allow us to go out of town, and at the same time told Mr. Steinkraus and I to warn the other banks as to how much money they might let him have as they had a real large amount on them, and which I afterwards learned that they already had been at the Pierce State Bank and had checks amounting to about $1,800 on the Citizens State Bank. Mr. Steinkraus then asked about how much they had on the other banks and they refused to tell him. They did not express a willingness to allow the officers of the Cones State Bank to procure currency to meet their demands before protesting the checks. They would allow us to go to one of the other banks and if they did not have enough they would protest them. While the cashier was out for the purpose of obtaining sufficient currency to pay said check, Lower and Bishop stated that we were foolish to undertake to buck the government; we might as well sign up the card and avoid further trouble. They offered threats and insinuations and repeated the facts of other bankers and what would eventually be ours and remained in the back room. They remained in the back room but I went into the front room to attend to general business for a short time, and then Mr. Mallory, our accountant, stepped back into the back room to visit with these men. I heard Mr. Lower state to Mr. Mallory that Bishop was a deputy United States Marshal, hard boiled and armed, and that he cleaned up the state of Kansas. He said the Cones State Bank if it did not sign the agreement to par would be ruined.

Either before or after the cashier returned to the bank with some currency he inquired of Lower and Bishop as to the amount of checks they held against the other banks and they refused to tell him at the same time stating they had a real large amount on them. After the cashier returned with the currency they asked him what he was going to do about the check. He stated, we are going to pay it and we did pay it. When said check was paid, I noted figures written with a pencil near the figures or amount of the check which was explained to me afterwards by Mr. Bishop that they had protest fees figured on all these checks together with all necessary papers ready to protest them. The pencil memorandum appeared on all the checks. While Lower and Bishop were in the bank, they indulged in a great deal of talk as to par clearance and stated they forced all but one bank in the state of Kansas to sign the par clearance and further stated that this one banker held out on par clearance and Mr. Bishop told him that the government would start a national bank in his town and drive him out of business, and that he, Mr. Bishop was personally instrumental in starting a national bank in that town and would stick to it until he drove the Kansas banker out of business. I saw a revolver on the person of Lower during their stay in the bank and saw him take it from his hip pocket and transfer it to his coat pocket leaving a large part of it exposed when he left the bank. Bishop exhibited to me protest papers and notices of protest already made out for each of the checks they had presented on the Cones State Bank and which were paid to them on that day in currency. He told me that he had any

number of bankers sign the par clearance card state to him that they could not afford to have them call upon the country banker in the manner they did; that their depositors would get suspicious and might ruin their banks, and told me that we could not afford to have them call on us in the manner they did as it might cause our depositors to get suspicious and ruin our bank. He said we are going to call on you fellows and it is bound to hurt your business. He said that many banks had signed the par clearance agreement because they could not afford to have Lower and Bishop call and demand money in such large amounts because of the effect it had upon their depositors in arousing their suspicious as to the solvency for the bank. They said that the Cones State Bank would suffer the same fate. The capital of the Cones State Bank on November 14, 1919 was $50,000., its deposits on November 14, 1919 were about $750,000. The amount of cash reserves to be kept against said deposits under the laws of Nebraska was five per cent of the total deposits of cash in our vault, two-fifths of which might be in Liberty or other government bonds. The face value of the Liberty bonds held by the Cones State Bank was about $75,000. The market value would be approximately $70,000, in addition to said bonds. We were required by law on that date to have approximately $22,500 in our vault.

Cross-examination:

The persons in question represented the Omaha Branch of the Kansas City Federal Reserve Bank. The Cones State Bank is located in the Omaha branch territory of the Kansas City Federal Reserve Bank. There were about a dozen checks. As to amounts I cannot say at this time, except to the one check of $30,100.96 and by the way wish to state that some of these checks were held for right at three weeks, but the total amount of these checks was something like $31,900, odd dollars. The cashier at the time I first requested him to join me was about 25 feet from Messrs. Lower and Bishop in the back room.

In connection with my answers to direct int. #16 and 17, both of the two men made the remark in question, both Bishop and Lower. One was confronting me and the other confronted the cashier, but we were near each other.

In connection with my answers to direct interrogatories Nos. 18 and 19, I know the facts to which I testify from my own direct knowledge because I knew where the president was and had the records of the transaction in Norfolk and *there* the other banks in Pierce.

In connection with my answers to direct interrogatory No. 25, at the time in question I was about 15 feet from Mr. Mallory and the other two men.

In connection with my answers to direct interrogatories Nos. 26 and 27 I myself heard this remark.

In connection with my answers to direct interrogatories Nos. 28,

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29 and 30, I heard the remarks myself and was close enough to the gentleman so we might rub elbows.

In connection with my answers to direct int. No. 31, I personally was present at the time the events to which I testify occurred.

In connection with my answer to direct int. #32, I paid the check in question myself.

In connection with my answer to direct int. #34, I personally heard the conversation in question, and I recall it in detail.

In connection with my answer to direct interrogatory No. 35, I personally heard them make the remarks to which I testify and I know these to be facts of my own personal knowledge.

In connection with my answer to direct int. #37, Lower and I at the time the events to which I testify occurred, were in the back room of the bank and I was about four feet from him.

In connection with my answers to direct int. #39, 40 and 41, the remarks in question were made to me.

In connection with my answer to direct int. #44, the amount of cash on hand in my bank at the time in question was according to my best recollection on or about $22,500 the legal reserve, and several times as much bonds as was required.

59.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

R. L. Mallory, Pierce, Nebraska, accountant of the Cones State Bank, in which business I was engaged on the 14th of November, 1919. I was in said bank on that date, and during the morning of that day I saw one W. S. Lower in said bank. I don't know what said Lower's relation to the Federal Reserve Bank of Kansas City was. He had been here on previous occasions. We knew; we were certain he was with them. He had stated before that he was their agent and representative, and he furnished us with satisfactory credentials that we felt satisfied he was their lawful agent. A man accompanied him into said bank on said day, whom I afterwards learned was named Bishop; I forgot his initials. These two men came in an automobile. There was a driver and I think one other party in said conveyance when it stopped at the bank. It was an automobile, and it seems to me they kept the engine running for a while while Lower and Bishop came into the bank.

A. J. Mastalir, our assistant cashier met Lower and Bishop when they came into the bank. One of these men said to the assistant

cashier when they came in, "We have some checks that we want to collect," or words to that effect. They presented these checks one at a time and demanded payment in cash, legal tender. They presented the checks one at a time. There was one check for $30,100.94. There was a consultation held in what we call the back room of the bank between the assistant cashier and the cashier. They offered a draft, Omaha exchange in payment of these checks; it was not accepted; it was flatly refused. They said they had positive instructions from the Federal Reserve Bank to receive nothing but legal tender in payment of these checks. They claimed to be acting under instructions from the Federal Reserve Bank, Omaha.

When the assistant cashier went into what we call the back room to confer with the cashier in regard to this big check, he stayed in there some little time and while he was in the back room Bishop and Lower walked through the bank through the lobby, opened the door into the back room and went in, they talked for some little time with both the assistant cashier and cashier, and shortly after that the cashier left the bank. Before he left, however, after some conversation Bishop asked him what he intended to do with the check, whereupon the cashier replied we intend to pay it. The assistant cashier immediately began payment of the check. While the assistant cashier was in the vault to get the money I walked into the back room where the process of payment was going on and in the course of a conversation with Lower and Bishop I made the remark that I would not care to ride with them out of Pierce while they were carrying so much money, whereupon Bishop replied that he was well armed. Lower said, yes, this man, pointing to Bishop is a deputy United States Marshal, hard boiled and he had run down robbers in Kansas and captured them. Bishop also remarked to me that it was only a matter of time before we would be on the par list and that we could not afford to have our customers see them drive up and carry this cash from our bank. There was some comment as to taking this amount of money through the country in an automobile. Bishop said he was well armed and was not afraid. I did not see any arms on these men myself.

These checks were finally paid in currency; there might have been a little silver, but not much if any. We paid what we had on hand and got a supply from Norfolk by automobile and some from the other banks in town, and Bishop asked me where the cashier had gone; he asked me if he had gone for money and stated that he would allow me to go to the other banks in town to get some money, but to be careful and not get too much from them as he also had a considerable amount of checks on them. He said that he would not allow us or wait for us to go out of town to get money; that he had orders to wait a reasonable length of time to secure payment, but not to wait any longer. The aggregate amount of these checks was much in excess of the amount of cash involved which said bank was accustomed to carry; approximately $10,000 or $12,000 more than we were required to carry. At that time the capital stock of said bank was $50,000. The average deposits—it is

pretty hard to tell—but that day I think they were about $700,000 as near as I remember.

Cross-examination:

I saw the car drive up along the east side of the bank, it being a big car and enclosed with curtains. I happened to be standing at the east window when the car drove up and saw Lower and Bishop get out of the car. It seems to me that the engine ran for a while; I could hear it and see the exhaust. Of course it did not run all the time because they were in the bank four hours or longer. It was a mild November day; I don't think it was freezing.

I heard what the men in question said to the assistant cashier, except some conversation that was had in the back room, and we were all right around the table close to each other. There were perhaps about a dozen checks. I don't know the exact amounts, they varied, but there were none of them very large except the big one I have referred to. I did not take part in the consultation.

The name of the bank upon which the draft in question was drawn is the United States National Bank of Omaha.

I did not see the arms, but I understood that Bishop carried them and he said to me "I am well armed."

I don't know the exact amounts of cash which my bank had on hand as of October 1, November 1, December 1, 1919, January 1, and February 1, 1920.

60.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

M. M. Inhelder, Pierce, Nebraska, bank clerk.

I was on duty as assistant cashier of the Citizens State Bank of Pierce, Nebraska, on or about the 14th day of November, 1919. I recall that one W. D. Lower representative of the Omaha Branch of the Federal Reserve Bank of Kansas City came to the Citizens state Bank on or about said date accompanied by Mr. Bishop of the same bank. When these gentlemen came into the bank on said occasion, they presented checks for payment and Mr. Magdanz paid them out in full. That is all I can recall, except that they had an argument, but I don't remember what was said, but I know very well they had an argument because they always did when they came in. They stopped for the business they had in hand at the second window

from the door. I was at the first window. That is about six fee from the other window.

A. F. Magdanz was the cashier at that time and he was there at that second window when they came in, and presentec checks fo payment, but I don't remember how he paid them, whether in silve or in currency. I don't remember but he paid the checks.

Mr. Bishop was armed, and the way I know is that he changed the gun from one side to the other hip pocket, from one hip to the other. He tried to conceal that, but tried to switch those without anybody seeing it, but I happened to be right at the window where I could see the butt of the gun when he changed it from one pocket to the other. Lower came in and demanded payment of a bunch of checks and talked to us just like we were a bunch of dogs. They left their car running in front of the bank with the driver and a woman in front seat, and they got the cash for all the checks from Magdanz. Bishop was armed and he came in with Lower.

Cross-examination

In connection with my answer to direct interrogatory No. 3, the said representative came into the Citizens State Bank, shortly after the noon hour.

In connection with my answer to direct interrogatories No. 4 and 5, I was at the first window about five or six feet from where they stood, but I could not tell what was said because customers were coming to my window and I was busy with them. This man Bishop was about three feet from me directly in front of my window where I saw him change the gun from one pocket to the other. I don't know the number of checks or the amount of each check. There was something like between $3,000 and $4,000 of checks they presented that day, and the largest of the checks was slightly over $2,000. I remember this check distinctly and know of my own personal knowledge about these checks. The arms consisted of a revolver carried in the hip pocket. I saw it myself. He passed it from one hip pocket to the other.

61.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

Deibler, D. C., cashier of the Pierce State Bank, Pierce, Nebr. Witness was connected with the Pierce State Bank during November, 1919. Witness paid a number of checks in silver and currency on

many different occasions to Mr. Lower who presented the checks, and on two different occasions Mr. Bishop was with Mr. Lower when presentation was made, one of these being November 7, 1919, on which date a gun display was made in our bank by these men according to witness' best recollection, said checks amounted in the aggregate to somewhere around $10,000, but witness doesn't remember the exact amount of this one day. Witness paid these checks in silver and currency to meet the demands of these men and payment was made on each check separately. It took witness about two hours to pay them. The payment of these checks by witness to Messrs. Lower and Bishop was witnessed by N. Benditzon, a local merchant, who was one of the bank's very best customers, that is one of the heaviest depositors. Mr. Benditzon entered the front door to *take* a deposit in witness' bank while Messrs Lower and Bishop were collecting these checks at the window in silver and currency. Immediately upon the sight of these large stacks of silver and currency being taken from the bank and put into their grips, and the gun display by these men, Mr. Benditzon almost became panic stricken. He immediately demanded an explanation of all this excitement from witness and after he had done the best he could to explain the situation the former went direct to the president, Mr. Frank Pilger for a confirmation of witness' explanation. After some time, the two of them quieted him down and assured him that it was not necessary for him to become alarmed about his deposit in witness' bank and that it would not be necessary for him to make any withdrawals on this account.

Cross-examination:

The Omaha Branch is a branch of the Federal Reserve Bank at Kansas City, Missouri.

Witness kept an itemized list of these checks for some time but has discarded it since thinking it of no value. However, an exact detailed list of these checks so presented is readily obtainable at the Federal Bank in Omaha. Witness does not remember the exact amount, but the currency so paid was in bills varying in amount from one dollar to $100.00., being the general run of currency kept in his bank for general use.

Witness himself saw N. Benditzon immediately upon his entry into the bank. He did not stand at any one point very long. He came to the front window to make his deposit but immediately upon seeing what was going on in the bank at that time he became very much excited and witness cannot say for a certainty at this time whether he went on and made his deposit that morning or whether he put it back in his pocket, and took it back to the store with him. Witness talked personally with Benditzon about as close as a person could get. After he left witness, he passed between Mr. Lower and Mr. Bishop who were collecting this money. This is when Mr. Benditzon was on his way to question the president Mr. Frank Pilger about all the excitement in the bank at that time. He did not stand at any one spot in witness' little bank long at a time.

62.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected as follows:

Florian Fuchs, Pierce, Nebraska: I am a farmer and live about three miles southwest of Pierce, Nebraska. I am engaged in the business of farming and am considered a large farmer. I have stock in the Higgins Packing Company and the Farmers Grain Company and have some oil stock and rubber tire stock. I am considered a wealthy man in my community.

In January, 1920, I was over in the hotel. I stayed in the hotel here with Mr. Myers, he is one of the fellows from the Higgins Packing Company. He was up from Omaha visiting with me, because I am vice president of the Higgins Packing Company and we had business. We were in the hotel lobby and we had things to figure up and I stayed overnight in the hotel, and that same evening Mr Bryan got acquainted with me from Kansas City. Mr. Bryan says he was looking for me and had been inquiring for me and he was looking for me. Now somebody said it was me with that Omaha man and on the street they pointed me out to him, and we went in the hotel and after we were in the hotel he got to talking to me. He says he was a fellow from Kansas City that he was sent out by one of those big bankers there to establish a national bank at Pierce and tried very hard to interest me, and I says, we have plenty of banks here and I did not want to be interested in things like that, there would not be room for another bank, and he said there ought to be a national bank in each city, the others don't do justice, you have to pay some extras to get those checks cashed, outside checks of the state bank, and we will cash those free of charge, and because you are a man well known and have all kinds of stock I want you to take hold of that thing, go out with me and help organize and put a national bank here and sell stock among the farmers, and perhaps, he said, you might be the big man, might be president of the concern if you want to, if you buy a block of stock; $25,000 capital stock the bank should be. Well, I says, I am not interested. Well, he says, if you are not interested, he says, why don't you have the Farmers Union? Why don't you take hold of that? I says, we don't care to organize a bank here, and I never did very much talking with him. I had some business with Myers, but he tackled me the next morning again and I never gave no satisfaction. There was a banker from Kansas City, but I forgot the name, from where he was sent, a banker in Kansas City. After a day or so, one even-

ing we came in again and I was talking with Myers, he stayed at the hotel, and I visited him again. Then there was another slim looking fellow there and I was not with him, and they were talking together, and he came up to me and said "This is Mr. Fairly. He is from the Government Reserve Bank collecting that money," and I don't know if it was the next morning, but right soon after then he talked to me, that Fairly talked to me what great advantages would be for the public to have a national bank, that would be a great advantage and he is around collecting that money; he is going to Osmond even, he told me, and I don't know if it was the next morning, but it was some morning I met both of them in the hotel. I saw the very man called Mr. Fairly that evening introduced to me as Fairly in the Cones State Bank and settling up with the bankers there and taking some money from those bankers, from Cones.

It must be it was the same fellow, you know there is not any doubt about it, it was Fairly. No matter if his name was Fairly it was the same fellow who talked to me at the hotel, boosting the national bank, that was with Bryan.

He said the proposed National bank would be stocked by a Kansas City bank. He said a man named Manifee was at the head of the bank. He saw me, it must have been two weeks afterwards. In the meantime he went down to Kansas City and came back again. That was Bryan, and he says "You fellows up here, I talked with Manifee, and you fellows should have charge of the big block of stock, you will have 210 shares perhaps and we would only keep 190." That would amount to 400 shares he had fixed up.

He did not say that the Federal Reserve Bank was really and emphatically the government of the United States; he said Manifee is running a national bank there, that he would keep most of that stock divided half and half, then afterwards he come out and we should have 210 and they would keep 190. But that other fellow collecting the money, he urged me to put in money to get that bank here. That was a fellow by the name of Fairly.

He tried his darnedest to get me into the organization of said bank; he tried awful hard. He wanted me to assist him in securing other farmers to take stock in said bank. It was to have $25,000 capital, but he never said how much his share would be. He wanted to give local stock holders 210 shares out of 400, and 190 for the Kansas City bank. At first they wanted us to take 180 shares and then 220 shares; the second time they offered us 210 and they would keep 190. This was after he came back from Kansas City the second time. As an inducement he said that I could be made president of the bank. He consulted with no other persons at that time except Myers who was connected with the Higgins Packing Company and heard him talking to me.

A. D. Fairly of Kansas City was introduced to me by Bryan, and I saw the very same man over at the bank collecting money for the government at the Cones States Bank; I meant Fairly.

Fairly was a reserve bank collector for the Government reserve banks and had been collecting and taking cash out of our banks here and sending it off.

After the first interview Bryan solicited me to take stock in s proposed national bank. I never took him anywhere and ne tried to help him any way whatever. I heard he was talking w Mr. Hetrick and he had some connections with Mr. Hetrick.

I saw Bryan and Fairly in a hotel lobby one evening. Fair said "It would be a great benefit to the farmers here if you hav national bank; those state banks always get a rake-off for colle ng checks from outside and it would be a big benefit and t money would stay with you farmers, and the reserve banks are v liberal if you have a national bank; they loan you the money and everything they can for you.

With reference to the purpose of the Federal Reserve System having this national bank organized at Pierce, Nebr. because local state banks were refusing to go on the par list, Fairly sta "it would be hundreds and thousands of dollars taken out of public by collecting for checks. Whenever they cash checks th collect from them and it would be a big saving; the national ba don't charge for that; they cash them for nothing. You fell ought to have your eyes open and look for your own affairs a don't let the state banks get ahead of you." He presented it as go as possible.

He claimed, you know, that the money would stay among t farmers and again it would be a big saving and we would not ha to pay any rake-off for getting those checks cashed and that t Federal Reserve Bank would be more liberal in sending money here. That is what they both said, Bryan too, you know.

The national bank was never organized.

Cross-examination:

In connection with my answer to direct interrogation #4: I ha $10,000 in the Higgins Packing Company; $750 in the Farme Grain Company, and in oil stock I have $360 and in the tire co pany I have $300.

In connection with my answer to direct interrogation #6, t place of the conference was in the hotel lobby and it lasted abo one hour.

In connection with my answer to direct interrogation #18. introduced Bryan to nobody because I did not want to mix in t banking affairs because we have three banks here anyway, and th is plenty, and I don't know that I want to get anybody sore at m I did not want to interfere with them at all.

In connection with my answer to direct interrogation #19 to conference elsewhere than at the hotel. Bryan had been talki to me that evening about one hour and the next day in the morn he tackled me again in the hotel lobby and I did not take mu time, you know. I said, "well, I have to go," but when he tackl me he might have spoken about a quarter of an hour. After he ca back from Kansas City, (it must have been the latter part January when he came back,) he gobbled me up on the street a took me to the hotel.

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63.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

Pondron, J. A. (Dallas, Texas): Was a Director of the Houston Branch of the Federal Reserve Bank of Dallas, Texas, from date of its organization until October 17, 1919. Resigned as such Director on last-mentioned date; letter of resignation attached as it appears on transcript page 72. Reasons for resignation are fully stated in said letter. His information was that the Federal Reserve Board was responsible for the general plan and scheme of enforcing par clearance. As a Director of the Branch Federal Reserve Bank, at Houston, he had no discretion in such matters; was not officially informed of the action of the Houston Branch in connection with the campaign for par clearance. Was not informed of the plans looking to the enforcement of par clearance, which were incorporated without consulting him as a Director. If non member banks declined the invitation to clear items at par, such items on such banks were accumulated and presented by a messenger from the Federal Reserve Bank, who demanded cash at the drawee bank's counter in payment of such items. Witness did not approve of this plan of campaign; but had no opportunity to voice his objections, and was informed that the orders came from the Federal Reserve Board.

Cross-examination:

Witness presumes that copy of Governor Harding's letter attached to the cross-interrogatories is correct. The source of witness' information as to the connection of the Federal Reserve Board with the par clearance campaign were the officers and employees of the Federal Reserve Bank, at Dallas, and of the Houston branch of that bank.

64.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for

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brevity of record are hereby referred to and incorporated in this
ception. A statement of the evidence so rejected is as follows:

A. K. Smith, Brainard, Nebraska, Cashier of the Bank of Brain
Brainard, Nebraska, where I was engaged in business during Nov
ber 1919, a representative of the Omaha Branch of the Federal
serve Bank of Kansas City called upon me. He desired my bank
agree to remit to the Federal Reserve Bank at par for all checks dr
on my bank and he said they would collect them in cash if we
not agree to remit to the Federal Reserve Bank at par for all ch
drawn on the Bank of Brainard. He said that in the absenc
said agreement checks on banks refusing to sign the par lis- wo
be held by the Omaha Branch of the Federal Reserve Bank u
a large amount had been accumulated and then the checks wo
be presented by special messenger and payment thereof demand
in currency or same as had been done at Pierce, Nebraska. He k
we wouldn't have sufficient currency to pay these checks and
that we must sign the par agreement. We did not sign the ag
ment willingly, but through fear of the consequences involve
demanding cash for the checks on our bank in accordance
what he told us. But for these threats of coercive measures wit
spect to the payment of said checks we would not have agreed
remit to the Federal Reserve Bank at Omaha, Nebraska, for ch
on us without charge on us for said service.

Cross-examination:

I don't remember the name of the representative of the Om
Branch of the Federal Reserve Bank of Kansas City to which I r
or the date or dates upon which such representative called u
me, but it was shortly before we signed the agreement to rem
par for the checks. We are now remitting at par only for ch
drawn on us for United States Government business.

65.

Because the court erred in rejecting the evidence of the wi
hereinafter named taken upon written interrogatories duly exe
and returned into court, said evidence having been duly tendered
the trial and objected to by defendants on the ground that it
proof of res inter alios acta and therefore irrelevant, and said ob
tion sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible
the reasons set forth in the tenth assignment of error, which
brevity of record are hereby referred to and incorporated in this
ception. A statement of the evidence so rejected is as follows:

William Daugerfield Smith, Benton, Louisiana, Banker.

I have been connected with the Bank of Benton, Louisiana s
June 6, 1910, as Cashier. Mr. Floyd Ikard called upon me, s
sometimes in the Fall of 1919. I think about September. He st
that he was representing the Federal Reserve Bank and called

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for the purpose of getting us to sign a contract to par all items
t to us on us from them. Mr. Clouse called on me next, some
e in the Winter of 1920. He came for the purpose of getting
to sign a contract to par all items sent to us on us from the
deral Reserve Bank. Mr. Clouse stayed with me from the time
pened my Bank in the morning, about 9 A. M. almost to closing
e about 4 P. M. The occasion of his coming was because I had
ncelled a previous contract to remit at par for the Federal Re-
ve Bank at Dallas. I cancelled the agreement because I had been
ctically forced to sign the contract by Mr. Ikard, that is Mr.
rd made it plain to me that unless we signed this contract he
uld put a representative or stay here himself to present all cash
ms sent from the Federal Reserve Bank to the Agent of the
deral Reserve Bank, stationed at this point, over the window and
mand cash for them. I did not think it was just that the Fed-
l Reserve resort to such expensive method in order to coerce me
do their will, I believing that I was due a reasonable charge or
for the service rendered. As I have above stated, Mr. Ikard made
plain to me that he would be present or have an agent present and
mand cash, over the window, for all items on this Bank sent to
n or his agent from the Federal Reserve Bank at Dallas; and I
owing that this would work a hardship on me, and in event that
re was more items presented over the window than I had cash on
nd to pay, that this would embarrass my Bank.
I was afraid that I might not keep enough money in my vault
meet an accumulation of these items presented over my window,
as dead sure that any item that I did not have the cash on hand
ay would be returned to the Federal Reserve Bank and as this
uld embarrass us, as well as our customers, therefore I not wish-
to lose any of my customers by having their checks returned to
m, when they had money to their credit, hence I entered into the
reement.
This would cause me to keep practically all of my reserve money
my vault at all times, I not knowing at what time I would be
led upon for a large amount of money. This would require
to carry in my vault and in sight exchange, more money than
law requires, thereby reducing the amount of my loans. My
tomers would become indignant upon having their checks not
ored by us, they having enough funds to their credit to pay
ne, therefore, a large per cent of them would withdraw their
ounts from my Bank. This would materially reduce the amount
my deposits, also the good name of my Bank would be at stake,
ng a large loss to us. Mr. Clouse said: "Mr. Smith, we have been
used of having a 'big stock'. You know it is necessary in order
enforce the law, that you have a big stock. We did not write
law, but we are going to enforce it. You no doubt realize that
have resource of the government behind us, in fact, we are part
the government."
Mr. Clouse said that it was necessary that they have a big stick,
l that they had to have it to enforce the law, but I do not recall
n directly threatening me with it, although he threw out broad

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hints. I did not sign a second agreement to remit at par to t Federal Reserve Bank of Dallas. I continued to remit to them i their cash items at par, realizing that I could not go in competi with such a powerful concern as the Federal Reserve Bank a taking the words of its agent that it was backed by the resources the government of the United States.

Cross-examination:

I do not know what the gross and net earnings of the Bank w for 1918, that is, I have not looked it up before answering th questions. The end of my fiscal year is on June 6th. My g earnings for my fiscal year ending June 6th, 1919, was abo $4,500.00. This is approximated. My gross earnings for my fis year ending June 6th, 1920, was a little more than $6,000.00 do not know what dividends were paid during 1918, but for our ye ending 1919 we paid a dividend of six per cent to the stockholde carried one and one-half per cent to the account as surplus and r served for interest and taxes $408.11. For 1920 we paid a divide to the stockholders of twenty per cent, carried $500.00 as surpl account, gave me $300.00 as a bonus, also reserved for interest a taxes a little over $500.00. The Bank of Benton carried depos during these years, in the Continental Bank & Trust Co. of Shre port, La., The Hibernia Bank & Trust Co. of New Orleans, and t Marine Bank & Trust Company of New Orleans, La. The Ban with whom the Bank of Benton carries accounts or deposits g credits to the Bank of Benton at par, for checks or other collect items sent them. We do not carry but a very small account in o New Orleans Bank and we are only doing business now with t Marine Bank & Trust Company as *as* we never send them items f deposit, but always send them exchange on the Continental Ban & Trust Co. of Shreveport, La., hence I do not know exactly wh part of their proposition I would take up, as they agreed that I would par items sent me from them that they would par the wh United States for me. My agreement with the Continental Bank Trust Co. of Shreveport La., was made before I was employed t the Bank of Benton, therefore, I do not know, or in fact, I ha never seen a written agreement in my files on this subject but it agreed between us that they will give me credit for all it sent the at par. The Bank of Benton deducts "exchange" before remitti for checks sent to it by its correspondent Banks, such being dra by the depositors of the Bank of Benton, the same being se through the mails to such correspondent Banks for collection.

66.

Because the court erred in rejecting the evidence of the witn hereinafter named taken upon written interrogatories duly execut and returned into court, said evidence having been duly tendered a the trial and objected to by defendants on the ground that it w proof of res inter alios acta and therefore irrelevant, and said obj tion sustained and said evidence ruled out.

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Plaintiffs excepted and insist that said evidence was admissible for reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

Thomas C. Sunsted, Franksville, Wisc., Cashier, Bank of Franksville. One agent of the Federal Reserve Bank of Chicago called here during the summer of 1919 and wanted us to agree to remit them at par, and at two different times during the same year, agents of this said Bank called on Mr. Geo. W. Miller of Racine, Wisc., who was at that time President of the Bank of Franksville, in regard to par collections. During the early part of 1920 there came a letter from said Federal Reserve Bank saying that after March 1st, 1920 all collections would be made at par. Their cash letters started to come and we knew if we did not par them, they would present them for cash over the counter, as they had done two other banks, therefore we sent them mutilated currency and C. M. & St. P. Rwy. Co. checks and U. S. Govt. checks issued in payment of interest on U. S. Registered Liberty Loan Bonds and interest coupons by Express collect in payment of these letters. The U. S. Govt. checks they refused to pay and returned them to us. We then made arrangements with the First Wisconsin National Bank of Milwaukee, Wisconsin, whereby they were to pay the checks and send them to us for collection.

There are two employees in said bank, Cashier and Assistant Cashier.

The amount of its deposits on September 6, 1921 were $116,-256.19.

The receipts of revenues from exchange would help materially to build up a surplus account for further protection of its depositors. Said bank has not agreed to remit at par to the Federal Reserve Bank of Chicago. Checks drawn on said bank are collected by the Federal Reserve Bank of Chicago through First Wisconsin National Bank of Milwaukee, Wisconsin. The usual rate of exchange is fifteen cents per hundred but Milwaukee banks allow but fifteen cents per thousand, or they will put their checks through the Federal Reserve Bank. The rate per $1,000 on currency sent by express from Franksville to Chicago is fifty-eight cents (58¢). No further statement to make.

Cross-examination:

The names of agents referred to, are not, or were not, known to me. I know from my personal knowledge that one agent called in Franksville, and Mr. Geo. W. Miller told me that he had had two visits from the Federal Reserve Bank Agents. The amount of exchange charges which my bank received during each of the years 1919, 1920 and 1921 was

June	15, 1918 to	December	31, 1918	$328.30
Jan.	1, 1919 to	"	31, 1919	860.10
Jan.	1, 1920 to	"	31, 1920	616.70
Jan.	1, 1921 to	October	1, 1921	290.20

E IN CENTER

The above amounts also include charges made for collection of notes.

	1919.	1920.	To 6/30/21
Gross earnings less interest paid	$5,712.19	$8,153.54	$4,411.[illegible]
Net earnings	1,677.47	1,686.71	635.[illegible]

The capital stock of my bank has not been increased or diminished since 1919.

67.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

E. O. Terry, a Banker, Newton, Texas.

Sometime prior to February 4, 1920, I had quite a long conversation with Mr. Lawrence E. Dignan, a representative of the Federal Reserve Bank of Houston, which was a branch of the Federal Reserve Bank of Dallas, Texas, regarding the payment of a very large bunch of checks presented to our branch Bank at Burkeville, Texas. I stated to him that I did not consider just or right that he should accumulate these checks in such quantities as it appeared he had done in this instance, and present them for payment, demanding cash. I had a telephone conversation with the representative of the Federal Reserve Bank while he was at the Branch Bank of Burkeville, Texas, and I in the Newton County State Bank at Newton, Texas, and explained to him that his batch of checks exceeded our cash balance at that bank, and that I would appreciate very much if he would let us issue to him Houston or Dallas Exchange in lieu of actual cash. He agreed to take the exchange, provided that we would sign a par agreement with the Federal Reserve Bank, otherwise he demanded cash.

Mr. Dignan demanded currency in the payment of said checks. We offered him exchange free of charge, and further offered him Exchange on the Newton County State Bank at Newton, Texas, and agreed to pay him cash for said exchange when he reached this point by private conveyance. He refused to accept my Exchange offered in lieu of currency. Mr. Dignan stated that his instructions from the Federal Reserve Bank was such that he had to collect the checks in cash, unless the par agreement was signed. I explained to Mr. Dignan that there was some risk in carrying this currency through the country, and if he would accept Newton Exchange he could eliminate

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this risk. I stated to the representative there was no express office at Burkeville, Texas, it being an inland town. I also stated to him that I was of the opinion that he could not send this currency out by Insured Registered Mail. I agreed with Mr. Dignan that if he would accept the exchange offered him on the Newton County State Bank, Newton, Texas, that I would cash same, it being necessary for him to come to this point in order to make connections with Railroad. The distance from Newton, Texas, to Burkeville, Texas, is fourteen (14) miles. The means of transportation as existed between these two points, at that time, was by automobile over rough roads. Mr. Dignan stated to me that his reason in insisting upon currency and not accepting exchange was that he might embarrass us to such an extent that we would sign the par agreement. Mr. Dignan stated to me that in making it embarrassing for the bank that he was acting under instructions from the Federal Reserve Bank. This conversation took place while Mr Dignan was at the hotel at Burkeville, Texas, in the presence of J. Wm. Oliphint, who resides in Huntsville, Texas, L. C. Woods, who resides at Burkeville, Texas.

Mr. Dignan explained to me that the Federal Reserve Bank had an unlimited expense account, and that he could make trips to Burkeville, Texas, as often as was necessary, regardless of the cost, and that he would continue these trips, in this manner, or bring other pressure to bear, until we signed the agreement. Mr. Dignan said that other pressure would be brought to bear on our bank to force it to sign the par clearance agreement.

The approximate aggregate of said checks presented was Five Thousand ($5,000.00) Dollars. If I remember correctly, the amount was more than Five Thousand Dollars. We carried an average amount of currency, at the Burkeville Bank, of from Two Thousand Dollars to Twenty Five Hundred Dollars to meet our currency demands. I carried the currency to Burkeville, Texas, and paid the checks, this being the first time these checks were presented at this bank for payment. I demanded of Mr. Dignan proper identification, and while he was securing same I replenished our cash, as stated in the first part of this paragraph.

Cross-examination:

The name of the representative of the Federal Reserve Bank was Mr. Lawrence E. Dignan. I am unable to give the correct number of checks, or the exact total presented by Mr. Dignan on this occasion but the approximate amount was Five Thousand Dollars. There was no exchange issued. The checks presented were paid in cash. There was no exchange issued. The checks presented were issued on the bank at Burkeville, Texas, and paid for in cash. Mr. Dignan stated to me that the Federal Reserve Bank paid all expenses of their representatives in making trips of this kind. I cannot give you the correct number of checks presented by Mr. Dignan, at that time, neither can I give you the exact total of all the checks, but the approximate amount was Five Thousand Dollars.

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68.

Because the court erred in rejecting the evidence of the witnes hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

L. P. Tanner, Pierce, Nebraska, Vice-President of the Citizens State Bank of Pierce, Nebraska.

I was engaged during the month of November 1919 in banking. At that time I was vice-president of the Citizens State Bank of Pierce, Nebraska, in active charge of the business of said Bank. At that time I had access to the records and files of said Bank and was familiar with its business affairs. On December 17, 1919, some checks were presented at said bank by an agent of the Federal Reserve Bank of Kansas City thru its Omaha branch for payment in currency. I can't state how many of said checks were presented. All I know is there was more than one; there were several. I recall one item of $2,102.85, and this with several other small ones constituted the full amount of $3,225.01. One of said checks for $2,102.85 was drawn by the Pierce Hardware and Implement Company dated November 10, 1919 to the order of New Ideal Spreader Company. Said check showed that it had been paid to the payee at Coldwater, Ohio and was forwarded to the Omaha branch of the Federal Reserve Bank and endorsed by that branch of the Federal Reserve Bank as of November 28, 1919.

Cross-examination:

In connection with my answer to direct interrogatory No. 3, I can't recall which particular agent it was on Dec. 17, 1919. They had so many different ones here. I did see the said agent enter the bank. I can't say whether any discussion took place or not on that particular day. We had several discussions about the matter at different times. I cannot state the amount of each individual check with the exception of the one amounting to $2,102.85 that being the only one of which we have a definite record. I saw the check myself. I don't remember whether it had any subsequent endorsements to that of the Federal Reserve Bank or not. I am sure that I can produce the original check on about a week's notice and will be glad to do and mail it to the clerk of the United States District Court by registered letter if requested to do so. This check was never presented to us and payment demanded thereon before the day it was paid to my knowledge.

69.

Because the court erred in rejecting the evidence of the witness hereinafter named taken upon written interrogatories duly executed and returned into court, said evidence having been duly tendered on the trial and objected to by defendants on the ground that it was proof of res inter alios acta and therefore irrelevant, and said objection sustained and said evidence ruled out.

Plaintiffs excepted and insist that said evidence was admissible for the reasons set forth in the tenth assignment of error, which for brevity of record are hereby referred to and incorporated in this exception. A statement of the evidence so rejected is as follows:

R. S. Wilfley, Steele City, Nebraska, business of banking.

I was engaged as Cashier of the Farmers State Bank, Steele City, Nebraska on or about the 15th day of December, 1919, and am still so engaged. On or about December 15th, 1919, one Mr. Bishop called at my bank and presented me with his card also stating that he was representing the Federal Reserve Bank of Kansas City, Missouri and interviewed me. I believe it was M. L. Bishop and the purpose of his interview was to get me to sign a card consenting for my bank to par all checks sent to me by the Federal Reserve Bank.

He said that the Federal Reserve Bank had decided to "place the State of Nebraska on the par list" at a certain date which he mentioned but which I don't remember. He said that the Federal Reserve Bank had already placed some other states on the par list and that he would like for me to sign the card which he presented. I asked him what would happen to my bank if I refused to sign the card and he said that the Federal Reserve would put my bank on the par list anyway and would send the checks thru the express company and demand the cash in payment for them. He went on to outline to me that it was the intention of the Federal Reserve to place the whole country on the par list and to eventually make personal checks as good as bank drafts over the country. He also outlined to me statements to the effect that it was against good business practice for country banks to make a charge for remitting for checks drawn on them. I then asked him if they were at that time collecting by express company on any banks and he said that they were and that they intended doing so in Nebraska. He then went on to say that the Federal Reserve Bank was going so far in their fight that they were causing train schedules to be changed so that the collection of checks could be made more quickly and that they were going to or had organized opposition banks where a bank refused to sign the card. He said that they intended to place all of the Nebraska banks on the par list regardless of whether or not the banks consented to it.

He said that the Federal Reserve was powerful enough to "put it across" and that they were even organizing opposition banks where a bank refused. He said that the profits of the Federal Reserve Bank were great enough that the country banks could not afford to

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refuse. He advised me very strongly to sign the card stating that he had been a banker at some town in Kansas and he understood it and if he were me he would sign. He told me it would be useless to fight by letting them send the checks by express and I told him that I thought it very unfair in method and very high handed. He replied by saying it was for the good of the cause. I asked him to tell me frankly what would happen to my bank if I refused and he then told me of the intention to collect by express company and how they were causing train schedules to be changed and opposition bank organized.

I made the statement that I would make an effort to have cash on hand to meet the cash demands for the Federal Reserve Bank and he replied by saying that I would not be able to get the cash because as soon as the City Banks found what I was doing with the cash they would refuse to let me have it. The effect of the above statements led me to believe that this might be the case as my city correspondents were both National Banks and I knew that the National Banks had to par their checks for the Federal Reserve Bank and would of course endorse the action of the Federal Reserve Bank which led me to sign the card. The statements of said Bishop certainly did cause me to sign the card. I called my father on the telephone and told him what had been said to me by said Bishop and he was of the same opinion as I was as to the matter. He stated that he thought it a rather arbitrary manner of forcing things but perhaps I had better sign it. My father is a banker of 14 years' experience.

Cross-examination.

I did not keep any memorandum of the conversation with said Bishop and cannot give the exact date on which it occurred. My bank, with the exception of a few weeks, remitted at par to the Federal Reserve Bank of Omaha and has on the 15th day of October 1921 had its name off the par list of said bank, but has remitted at par at all times since December 1919 with the exception as stated above. I have never conferred with anyone relative to the matter contained in my answers except to merely discuss with fellow bankers the injustice of the whole proceeding.

Wherefore, the appellants pray that said decree may be reversed.

April, 1922.

ALEX. W. SMITH,
Solicitor for Appellants.

ORVILLE A. PARK,
Macon, Ga.;
SMITH, HAMMOND & SMITH,
THEODORE H. SMITH,
Atlanta, Ga.,
Of Counsel.

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Index to Rejected Witnesses.

	Exception No.	Page.
Benditzson, Nathan	47	75
Clark, R. B.	21	41
Craig, William S.	44	69
Dale, J. W.	56	91
Deary, W. A.	48	76
Deibler, D. C.	61	102
Fuchs, Florian	62	104
Helpman, John B.	49	78
Inhelder, M. M.	60	101
Irwin, O. J.	50	79
Kuenzi, W. H.	51	80
Madison, H. Flood	16	29
Mallory, R. L.	59	99
Mastalir, A. J.	58	94
Meek, Ernest	11	9
Norton, A. L.	52	82
Nower, N. L.	53	85
Nunn, L. C.	54	88
Paxton, C. B.	55	90
Pohlman, A.	57	92
Pondron, J. A.	64	107
Rous, Charles	11	9
Smith, W. D.	65	108
Sunsted, Thomas C.	66	110
Terry, E. O.	67	112
Tonner, L. P.	68	114
Waggoner, C. D.	46	73
Wilfley, R. S.	69	115
Wood, George D.	10	6

Filed in office, this the 1st day of May, 1922.

O. C. FULLER,
Clerk.

IN CENTER

751

Appeal Bond.

(Filed June 9, 1922.)

In United States District Court.

Know all men by these presents:

That we, American Bank & Trust Co., et al., plaintiffs and interveners in said case, as per stipulation of May 3, 1920, as principals, and United States Fidelity & Guarantee Co., as surety, are held and firmly bound unto the Federal Reserve Bank of Atlanta, and M. B. Wellborn, L. C. Adelson, W. W. Bell, and Joseph A. McCord, in the full and just sum of $10,000.00, to be paid to the said obligees, their certain attorneys, successors, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, and our successors, jointly and severally by these presents.

Sealed with our seals and dated this 24 day of April, in the year of our Lord one thousand nine hundred and twenty-two.

Whereas, lately at a District Court of the United States for the Northern District of Georgia, in a suit pending in said Court between said obligors, as plaintiffs and interveners, and said obligees, as defendants, a decree was rendered against the plaintiffs and interveners, and the said plaintiffs and interveners, having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said obligees citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at the City of New Orleans, in said Circuit on the — day of ——, next; and

Whereas, on application of the plaintiffs, said orders and decrees *and* superseded, and the restraining order heretofore granted in said cause is continued of force pending disposition of said appeal in the Appellate Court.

752 Now, the condition of the above obligation is such that if the said obligors shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue. American Bank & Trust Co. et al., As Principals, all as Named in the Stipulation of May 3, 1920, of Record, by Smith, Hammond & Smith, Their Solicitors of Record. United States Fidelity & Guaranty Co. (Seal), by Frances G. Witherspoon, Attorney in Fact, As Surety. (Seal.)

Approved by: Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

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Stipulation of April 6th, 1922.

(Filed June 9, 1922.)

In United States District Court.

For purpose of appeal from the final decree of the Court in said case, dated March 25th, 1922, counsel for Complainants and Interveners and counsel for the Defendants do hereby stipulate that the former stipulation as to statement of the parties on the record allowed and filed by the Court and made a part of the record under date of May 6th, 1920, shall obtain with respect to the statement of
753 parties in the appeal from said final decree of March 25th, 1922.

This 6th day of April, 1922. Alex. W. Smith, Solicitors for Complainants and Interveners. Hollis N. Randolph, R. S. Parker, Solicitors for Defendants. John W. Davis, M. B. Angell, Of Counsel for Defendants.

Order.

The foregoing stipulation is allowed and ordered filed as a part of the record of this case this 6 day of June, 1922. Sam'l H. Sibley, U. S. Judge.

[File endorsement omitted.]

754 **Præcipe.**

(Filed June 9, 1922.)

In United States District Court.

To the Clerk:

You are requested to take a transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit, pursuant to an appeal allowed in the above-entitled case, and to be included in such transcript of record the following, and no other papers and exhibits, to-wit:

1. The original petition or bill in said case included in transcript from the Superior Court of Fulton County, omitting Exhibits process and sheriffs return.

2. Amendment to original bill with order of March 23, 1920, allowing same.

3. Defendant's answer to said original bill and said amendment.

4. Amendment to prayers of original bill with order of January 9, 1922, allowing same, omitting filing entry.

5. Amendment to original bill with order of January 11, 1922, allowing same, omitting filing entry.

6. Defendant's answer to said amendment with orders thereon and filing entries.

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7. Statement of the testimony introduced in evidence on the trial beginning January 9, 1922, in the following forms, to-wit:

(*a*) Printed pamphlet entitled Supplement No. 1, containing documentary evidence.

755 (*b*) Printed pamphlet entitled Supplement No. 2, containing the testimony delivered in open Court reduced to narrative form.

(*c*) Printed pamphlet containing reprint of the interrogatories propounded to defendants under Rule 58, the answers and the affidavits thereto as embraced in the first 138 pages of said pamphlet.

(*d*) Printed pamphlet containing reprint of the depositions of Hon. W. P. G. Harding, taken at Washington, D. C., July 22, 1921, with exhibits 2 and 3 embraced therein.

(*e*) Stipulations of June 6th, 1922, between Counsel of record as to the evidence in said case, with order of Court and filing entries thereon, and the stipulation as to rulings at trial and disqualification of Judge Sibley.

8. The opinion of the Court dated March 11th, 1922.

9. The final decree of the Court dated March 25th, 1922.

10. The petition for apeal and allowance thereof.

11. The Assignment of Error, the original of which is in printed form and extra copy furnished for certification.

12. The Citation on Appeal and service thereof.

13. The order of Court granting supersedeas.

756 14. The Appeal Bond.

15. Stipulation of April 6, 1922, as to naming parties of record.

16. This Præcipe and service thereof.

Respectfully, Smith, Hammond & Smith, Orville A. Park, Alex W. Smith, Theodore H. Smith, Appellant's Solicitors.

Due and legal service acknowledged; copy received. This 6 day of June, 1922. John W. Davis, Hollis N. Randolph, Robert S. Parker, Solicitors for Appellees.

[File endorsement omitted.]

757 **Clerk's Certificate.**

UNITED STATES OF AMERICA,
Northern District of Georgia, ss:

In United States District Court.

I, Olin C. Fuller, Clerk of the District Court of the United States in and for the Northern District of Georgia, do hereby certify that the foregoing and attached 101 pages of printing and writing, together with the printed pamphlets furnished by counsel, labeled: "Answer of Defendants," "Supplement No. 1, All in Evidence in said Case," Supplement No. 2, Brief of Oral Testimony, etc.," "Interrogatories propounded by Plaintiffs and Defendants' Answers," "Depositions of Hon. W. P. G. Harding," and "Assignment of

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Error," contains a true copy of the record and all proceedings in the case of The American Bank & Trust Company, et al., versus Federal Reserve Bank of Atlanta, et al., being No. 138 In Equity and No. 99 Appeals, as specified in the præcipe of counsel therein as fully as the same remains of record and on file in my office at Atlanta, Georgia, except that the Original Citation with Acknowledgment of Service thereon is included therein instead of a copy thereof.

In testimony whereof I hereunto set my hand and the seal of the said District Court, at Atlanta, Georgia, this the 3rd day of July, A. D. 1922. Olin C. Fuller, Clerk United States District Court for the Northern District of Georgia. (Seal.)

Citation omitted from the printed record, the original thereof being on file in the Clerk's office.

* * * * * * *

738 That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of October 2nd, 1922.

[Title omitted.]

On this day this cause was called, and, after argument by Alex W. Smith, Esq., for appellants, and Hollis N. Randolph, Esq., and John W. Davis, Esq., for appellees, was submitted to the Court.

739 **Opinion of the Court.**

(Filed November 2nd, 1922.)

IN THE

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3906.

[Title omitted.]

Appeal from the District Court of the United States for the Northern District of Georgia.

Alex. W. Smith, (Alexander W. Smith, Orville A. Park, Smith, Hammond & Smith, and Theodore H. Smith on the brief), for Appellants.

Hollins N. Randolph, R. S. Parker, John W. Davis and M. B. Angell for Appellees.

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Before Walker and Bryan, Circuit Judges, and Sheppard, District Judge.

WALKER, *Circuit Judge:* Except as to a feature of the bill mentioned below, nothing has occurred to require a revision of or departure from the conclusions stated in the opinion delivered by this Court in this case when it was here on a former appeal. American Bank & Trust Co., v. Federal Reserve Bank of Atlanta, 269 Fed. 4. What was held by the Supreme Court to show the existence of a right to relief under the general prayer for relief was the
760 part of the bill containing allegations to the effect that, in pursuance of the alleged policy of the Federal Reserve Board to bring about the collectibility by banks of bank checks at par, the appellee Reserve Bank and its officers intended to accumulate, until they reach a large amount, checks upon banks of the class to which the appellant banks belong, and then to cause them to be presented for payment in cash over the counter, or by other devices detailed to require payment in cash in such wise as to drive the drawees out of business or force them, if able, to submit to the scheme of making bank checks collectible at par. American Bank & Trust Co. v. Federal Reserve Bank, 256 U. S. 350. The conduct which the Supreme Court decided to be wrongful and subject to be enjoined was the alleged threatened accumulation of checks for the purpose of using them in the manner alleged. It was not decided or intimated that the appellee bank would be guilty of any actionable wrong by merely presenting or causing to be presented bank checks held by it to the drawees for payment in cash over the counter. The alleged accumulation of checks for the purpose charged was an essential feature of the alleged conduct which was decided to be wrongful. We are not of opinion that a bank in receipt for collection of checks on other banks is guilty of an abuse of its right as such holder when, in due course, with reasonable promptness, without designed delay or accumulation, and in proper manner, it presents, or causes to be presented, those checks to the drawees for payment in cash. In so doing the collecting bank would be exercising its right as the holder of checks received by it for collection, and would not be guilty of an abuse of that right for an unlawful purpose. If the holder of the checks is guilty of no wrong the fact that the payee is inconvenienced by having
761 to pay in cash would not give the latter a valid ground of complaint. Inconvenience resulting to one party from another's exercise of a right in a lawful way does not give the former a right of action. The most that the evidence relied on by the appellants tended to prove was that at and prior to the time of filing the bill the appellee bank intended or proposed to deal in the just stated manner with checks received by it for collection, when the drawees did not consent to remit at par, and that it was after this suit was brought that appellee bank manifested its willingness to allow payment of such checks to be made either in cash or in acceptable exchange. The trial judge specifically found that "the

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charge that the Federal Reserve Bank at Atlanta would accumulate checks upon country or non-member banks until they reach a large amount, and then cause them to be presented for payment over the counter, so as to compel the plaintiffs to maintain so much cash in their vaults as to drive them out of business, or an alternative agreement to remit at par, is not sustained by the evidence." He further found "the evidence insufficient to sustain any charge in the bill that the Federal Reserve Bank was acting illegally or exercising any right it had so as to oppress or injure the plaintiff banks." The record before us does not warrant the setting aside of either of those findings. We do not think that the evidence adduced justified the granting of any of the prayed for relief which was denied by the decree appealed from. By that decree the appellee Bank was "enjoined and restrained from publishing, upon any par list issued by the said defendant, the Federal Reserve Bank of Atlanta, the name of any non-member bank being a plaintiff in this case unless such non-member bank consents or has consented to remit at par."

762 Our attention has been called to an opinion rendered, after this case was argued and submitted, upon the granting of a preliminary injunction in the case of Farmers and Merchants Bank of Catlettsburg, Kentucky, vs. The Federal Reserve Bank of Cleveland, Ohio, and Mary B. McCall, pending in the District Court of the United States for the Eastern District of Kentucky. That opinion shows that the granting of a preliminary injunction in that case was influenced by the showing made that the defendant bank, by its authorized agents, adopted what well might be deemed to be unwarranted methods in collecting checks on the plaintiff bank. That case is plainly differentiated from the instant one by the above quoted explicit finding in the latter to the effect that the evidence did not sustain any charge in the bill as to improper conduct by the appellee Bank or its agents. We do not think that that opinion shows that our above indicated conclusions in the instant case are incorrect.

In the absence of any showing that the appellee bank consented to or approved of the use of any unlawful means of enforcing or promoting the adoption or carrying out of the policy or plan of making bank checks collectible at par, the fact that the appellee bank was in accord with other Federal Reserve Banks in adopting that policy and attempting to bring about the general acceptance and adoption of it cannot properly be given the effect of making the appellee bank responsible for unlawful acts done, in the effort to enforce that policy, by or at the instance of other Federal Reserve Banks. An express or implied agreement between the several Reserve Banks to promote the adoption of the policy mentioned does not import a common consent to the use by any party to such agreement of unlawful means to effectuate the common lawful purpose.

763 Assent by one party to concert of action with others to accomplish a lawful purpose does not involve or amount to the former consenting to or approving the unlawful conduct of any one. There was no evidence tending to prove that the appellee bank

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authorized, consented to or ratified the use by or in behalf of other Reserve Banks of illegally coercive methods to bring about the general adoption of the above mentioned policy. It follows that the evidence offered to prove the use by or in behalf of other Reserve Banks of unlawful means to accomplish the alleged common purpose was properly excluded.

The court disallowed a proposed amendment of the bill having the effect of adding as parties plaintiffs thereto banks located in Federal Reserve Districts other than the Sixth. That ruling was not erroneous. The complaints made by the bill are based upon what it alleged the appellees did or proposed to do in transactions between the appellee Federal Reserve Bank of the Sixth Federal Reserve District and the appellant banks, which are located in that District. The banks unsuccessfully sought to be added as parties plaintiff are so far strangers to the transactions mentioned as to keep the alleged conduct complained of from giving to those banks a right of action based on that conduct, with the result that those banks are not entitled to be joined as parties plaintiff in this suit.

The same interrogatories were propounded by the appellants to several of the appellees. A separate answer was made to each of those interrogatories, each person interrogated making such answer his own. The court overruled objections to such answers on the
764 ground that answers so made to interrogatories were violative of the provision of Equity Rule 58 that "each interrogatory shall be answered separately." What the quoted provision forbids is the making of one answer a response to more than one interrogatory. It does not forbid several persons to whom an interrogatory is propounded joining in the making of one separate answer thereto. The provision does not require the duplication or multiplication of answers to an interrogatory when the parties interrogated desire to make the same answer thereto. The answers made to interrogatories were not subject to objection on the ground mentioned.

The conclusion is that the record does not show any reversible error. The decree is affirmed.

765 **Judgment.**

Extract from the Minutes of November 2nd, 1922.

[Title omitted.]

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, American Bank & Trust Company et als., and the surety on the appeal bond herein, United States Fidelity & Guarantee Co., be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

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766 **Petition for Appeal and Order Allowing Same.**

[Filed November 18th, 1922.]

IN THE

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3906.

[Title omitted.]

To the Supreme Court of the United States:

"American Bank & Trust Company et al.," by stipulations of record in said case dated May 3, 1920 and March 15, 1922, and approved by orders of the Trial Court under date of May 6, 1920 and June 6, 1922 includes, by the expression "et al." all parties plaintiff and appellant in said case, both corporate and individual, as fully set forth in said stipulation, without the necessity of setting out the several names of said parties in extenso. In like manner, "Federal Reserve Bank of Atlanta et al." includes and refers to all parties defendant and appellees in said case. By reason of said stipulation it is not necessary to enlarge the record by repeating all of said names in this petition, there being several hundred banks parties plaintiff in said case.

Said appellants, thus named by reference and stipulation, respectfully show that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit and that a judgment has therein been rendered, on the 3rd day of November, A. D. 1922, affirming the decrees of the District Court of the United States for the Northern District of Georgia, and that the matter in
767 controversy in said suit exceeds $1,000 besides costs; that this cause is one in which the United States Circuit Court of Appeals for the Fifth Circuit has not final jurisdiction, and that it is a proper cause to be reviewed by the Supreme Court of the United States on Appeal.

Wherefore, the said appellants pray that an appeal be allowed them in the above entitled cause directing the Clerk of the United States Circuit Ciurt of Appeals for the Fifth Circuit to send the records and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellants may be reviewed, and if error be found, corrected according to the laws and customs of the United States. (Signed) Alex. W. Smith, Orville A. Park, Theodore H. Smith, Solicitor- for Appellants. Smith, Hammond & Smith, Atlanta, Georgia; Orville A. Park, Esq., Macon, Georgia; Theodore H. Smith, Atlanta, Georgia, Of Counsel.

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IN THE

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3906.

[Title omitted.]

Order Allowing Appeal.

It is hereby ordered that the appeal in the above entitled case to the Supreme Court of the United States be and is hereby allowed as prayed. Nov. 18th, 1922. (Signed) R. W. Walker, United States Circuit Judge, Fifth Circuit.

768 **Assignment of Errors.**

[Filed November 18th, 1922.]

IN THE

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3906.

[Title omitted.]

The appellants in the above entitled cause, in connection with their petition for appeal herein, present and file therewith their assignment of errors, as to which matters and things they say that the decree entered herein on the 19th of November, 1920, is erroneous, to-wit:

1. In holding and deciding that the record before the Court of Appeals did not warrant the setting aside of the finding of the trial judge that "the charge that the Federal Reserve Bank at Atlanta would accumulate checks upon country or non-member banks until they reach a large amount, and then cause them to be presented for payment over the counter, so as to compel the plaintiffs to maintain so much cash in their vaults as to drive them out of business, or an alternative agreement to remit at par, is not sustained by the evidence."

2. In holding and deciding that the record before the Court of Appeals did not warrant setting aside of the finding of the trial judge that "the evidence is insufficient to sustain any charge in the bill that the Federal Reserve Bank was acting illegally or exercising any right it had so as to oppress or injure the plaintiff banks."

3. In holding and deciding that the evidence adduced
769 did not justify the granting of any of the prayers for relief which were denied by the decree appealed from.

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4. In holding and deciding that the evidence adduced did not show that the appellee Reserve Bank consented to or approved of the use of the unlawful means in forcing and promoting the adoption of and carrying out of the policy or plan of making bank checks collectible at par, employed by Federal Reserve Banks in other districts.

5. In holding and deciding that the appellee Reserve Bank was not chargeable in the case at bar with responsibility for the unlawful methods employed by other Reserve Banks in other districts in pursuance of the common policy of enforcing par clearance throughout the United States.

6. In holding and deciding that the concerted plan of the Federal Reserve Banks, acting under the approval of the Federal Reserve Board to put into effect throughout the United States universal par clearance, was not an unlawful combination to effect the unlawful purpose of coercing plaintiff banks, and other banks in similar situation throughout the United States, to remit at par.

7. In holding and deciding that the appellee Reserve Bank did not authorize, consent to, or ratify the use by, or in behalf of, other Federal Reserve Banks, of illegal coercive methods to bring about the general adoption of Universal Par Clearance.

8. In holding and deciding that the evidence offered to prove the use by or in behalf of other Reserve Banks of unlawful means to accomplish the common purpose of putting into effect universal par clearance, was properly excluded.

9. In holding and deciding that the intervention tendered by certain banks located in Federal Reserve Districts other than
770 the Sixth Federal Reserve District, as appears of record, was properly disallowed by the trial judge under the original bill as amended.

10. In holding and deciding that the banks named in said intervention, so disallowed, were so far strangers to the transaction mentioned as to keep the alleged conduct complained of from giving to those banks a right of action based on that conduct and that said banks were not proper parties plaintiff in said cases.

11. In holding and deciding that, under Equity Rule 58, the requirement that each interrogatory shall be answered separately merely forbids the making of one answer a response to more than one interrogatory and does not require that each of the witnesses interrogated shall answer each question propounded, separately, and that the answers made to the interrogatories propounded to defendant's under said Rule 58 were not subject to objection upon this ground.

12. In holding and deciding by reaffirming the opinion and judgment of said Court in said case on a former appeal as set forth in American Bank & Trust Company et al., against Federal Reserve Bank of Atlanta, et al., 269 Federal Page 4, that under the provisions of Sections 13 and 16 of the Federal Reserve Act, the Federal Reserve Bank of Atlanta was authorized to accept any and all checks payable on presentation and was required to collect same without

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deduction for so-called exchange or otherwise, although such checks were drawn upon banks that did not, at the time of the receipt of such checks, maintain a deposit with said Federal Reserve Bank showing a balance sufficient to offset the items in transit held for its account by said Federal Reserve Banks, and upon banks that had not agreed, and did not intend to agree, to remit proceeds of any such check without charge for such remittance of the proceeds thereof, whether such charge be made under the description
771 of exchange or otherwise.

13. In holding and deciding that the defendant Federal Reserve Bank of Atlanta is authorized under the law to collect checks drawn upon banks that do not maintain deposits and that do not agree to remit at par, and to pay the expenses thereof, and in not holding and deciding that the defendant Federal Reserve Bank was prohibited from handling checks drawn upon non-member and non-depositing banks that refused to remit at par, and was prohibited from incurring any expense in the collection of any such checks whether by way of exchange, or otherwise.

14. In holding and deciding that the trial judge did not err in holding and decreeing that in the inauguration by the defendant Federal Reserve Bank of Atlanta of its par clearance system, said defendant bank was not inspired by any ulterior purpose to coerce or injure any non-member bank which refused to remit at par. Said holding is erroneous in that:

(*a*) The evidence discloses that the par clearance system was inaugurated by the Federal Reserve Board, and not by the defendant Reserve Bank, the avowed purpose being to make it operative throughout the whole Federal Reserve System of twelve Federal Reserve Banks covering in their respective districts the whole territory of the United States under a common and uniform policy promulgated by the Federal Reserve Board.

(*b*) Under the evidence the defendant Reserve Bank stated in writing its purpose to adopt methods of collection of checks drawn on non-member banks that refused to remit at par that would be embarrassing, annoying and expensive to such non-member banks unless such non-member banks would agree to remit at par, and the threat was duplicated in a form letter addressed by registered mail to one thousand and fifty of such non-member banks, including plaintiffs and intervenors, in the Sixth Federal Reserve District. Coercive intent is implicit in said threats and defendants seek to justify it under the provisions of the law. Actual execution of the threats was in process until stopped after the restraining order was served in said case. Injury to such non-member banks is likewise implied in such threats and fully proven in the evidence, said injury being the basis of coercion.

772 15. In holding and deciding that the trial judge did not err in holding and decreeing that in the inauguration by the defendant Federal Reserve Bank of Atlanta of its par clearance system, said defendant bank did not intend to accumulate checks upon country or non-member banks until such checks reached a large amount and then cause them to be presented for payment over

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e counter so as to compel the plaintiffs to maintain so much cash
their vaults as to drive them out of business as an alternative to
reeing to remit at par. Said holding is erroneous in that:
The evidence discloses that defendants threatened to, and did
lace the names of sundry non-member banks, plaintiffs herein, and
ithout their consent, on the so-called par lists circulated to the mem-
rs and clearance member banks in the Federal Reserve System
roughout the United States, and that the necessary and automatic
sult of such publication and distribution of said par lists was to
vert to, and accumulate in, the hands of defendants practically all
ecks drawn on such non-member banks that circulated outside
ir respective towns and cities; that when so diverted from their
stomary channels and concentrated in the hands of defendants
r collection, embarrassing, annoying and expensive methods of
llection would be employed, chief among which was to be their
esentation for payment over the counters of the banks upon which
awn in cash only; that the necessary result of such process would
mpel plaintiffs to maintain cash reserves in their vaults to an
tent that would make the alternative of remitting at par the
sser of two evils; that such methods constitute warfare on plaintiffs
ithin the meaning of the decision of the Supreme Court in this
se rendered May 16, 1921; and the law assumes that the neces-
ry result of defendants' conduct was intended.

16. In holding and deciding that the trial judge did not err in
lding and decreeing that the evidence submitted by plaintiffs is
sufficient to sustain any charge in the bill that the defendant, the
ederal Reserve Bank of Atlanta, was acting illegally or exercising
y right which it had so as to oppress or injure the plaintiff banks.
Said decree is erroneous in that:

(a) Plaintiffs were entitled to have all the evidence in the case
and the admissions of the answers of the defendants con-
573 sidered in connection with the conclusion and finding in the
final decree of the court now excepted to, and not alone the
idence submitted by plaintiffs.

(b) The evidence submitted by the plaintiffs alone fully sustains
e charges in the bill.

(c) The evidence as a whole, and the admissions of defendants'
nswers demanded a finding that defendants were acting illegally
n receiving and undertaking to collect any check on plaintiffs be-
use they are non-members of the Federal Reserve System and
one of them ever created or maintained with the Federal Reserve
ank of Atlanta balance sufficient to offset the items in transit held
r their account by said Federal Reserve Bank of Atlanta and none
f them had agreed to remit at par.

(d) The evidence in said case shows that plaintiff banks would
e injured by the exercise of the rights claimed by defendants under
ither alternative presented, viz: 1st, by diminution of earning
ower and dislocation of ordinary banking reserves involved in main-
aining cash in vault to meet all current checks; or 2nd, by the loss
f all revenues derived from the service of remitting the proceeds
f such checks from the bank on which drawn to the place of busi-
ess of the holders entitled thereto.

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(*c*) Every substantial and material allegation of the bill as amended is either admitted or proven by the preponderance of the evidence in said case.

17. In holding and deciding that the trial judge did not err in holding and decreeing that the Federal Reserve Bank of Atlanta may properly enter on the par lists the names of towns or cities with no other qualification than the representation that the defendant bank will undertake to collect at par checks drawn on any bank in such town or city whether a member or a non-member of the Federal Reserve System.

Said decree is erroneous in that:

(*a*) Such a representation is misleading and amounts to unfair competition in the banking business because it solicits the sending to it of checks or non-member banks in any such town or city that have not agreed to remit at par and have not created and maintained balances with defendant bank required by law, by reason whereof such checks so solicited cannot be lawfully handled by defendant bank.

(*b*) In any town in which is located only one bank, and that bank one that refuses to remit at par and which is a non-member and non-depositing bank in the Federal Reserve Bank of
774 Atlanta, the publication of the name of the town is equivalent to the publication of the name of the bank, and under the evidence such publication would be designed for the sole purpose of acquiring possession of checks on such non-member bank to be used in the par clearance campaign in the embarrassing, annoying and expensive methods of collection charged in the bill and shown by the evidence to constitute the most effective weapons available to the Federal Reserve Banks throughout the system in putting into effect universal par clearance in banks that do not agree to remit at par.

(*c*) The conclusion may be drawn as clearly from the publication of the name of a town or city as from the publication of the name or names of the one or more banks constituting all the banks in such town or city, that such bank or banks have agreed to remit at par, or have agreed to enter the par clearance system of the Federal Reserve Banks. Universal par clearance, ex vi termini, includes all banks, and when, if ever, accomplished the par lists become functus officio. While in progress the publication of territorial divisions represented by towns, cities, states, or districts, necessarily implies that all banks within such designated territory are a part of the clearance system. Hence if the publication of the specific name of a bank that has not agreed to enter the system is wrongful, the publication of the territory in which such bank is located is also wrongful as to it.

18. In holding and deciding by reaffirming its opinion and judgment in said case on a former appeal thereof as reported in the American Bank & Trust Company et al., against Federal Reserve Bank of Atlanta, 269 Federal, Page 4, that it was the intention and purpose of Congress expressed in the Federal Reserve Act, to establish universal par clearance in the United States.

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19. In holding and deciding by reaffirming its opinion and judgment in said case on a former appeal thereof as reported in the American Bank & Trust Company et al., against Federal Reserve Bank of Atlanta, 269 Federal, Page 4, that resort to the expedient of presenting checks for payment in cash over the counter by special agents employed by the Federal Reserve Bank is neither oppression nor unfair competition justifying an injunction against such conduct on the ground that it does not amount to legal duress.

20. In holding and deciding by reaffirming its opinion and judgment in said case on a former appeal thereof as reported in the American Bank & Trust Company et al., against Federal Reserve Bank of Atlanta, 269 Federal, Page 4, that conduct amounting to duress was necessary as a condition precedent to injunction against the conduct complained of in procuring checks on non-depositing and non-member banks to be lodged with the defendant Federal Reserve Bank and presenting them for payment in currency by banks on which they are drawn.

21. In holding and deciding by reaffirming its opinion and judgment in said case on a former appeal thereof as reported in the American Bank & Trust Company et al., against Federal Reserve Bank of Atlanta, 269 Federal, Page 4, that an illegal conspiracy is not predicable upon doing of a lawful thing by lawful means, even when done in combination, and in not holding and deciding that combinations and conspiracies to do lawful things through lawful means with the ulterior purpose of injuring the business and property rights of competitors constitutes a legal wrong and will be enjoined where common law remedies are insufficient to protect the rights of the parties injured thereby.

22. In holding and deciding by reaffirming its opinion and judgment in said case on a former appeal thereof as reported in the American Bank & Trust Company et al., against Federal Reserve Bank of Atlanta, 269 Federal, Page 4, that no conspiracy is possible between the Federal Reserve Banks of the various districts created under the Federal Reserve Act because each operates only in its own district, and in not holding that carrying out the alleged purpose of creating universal par clearance necessarily involves the co-operation of all the Federal Reserve Banks in the United States, and in not holding and deciding that concert of action of all the Federal Reserve Banks in the United States under instructions from the Central Control of the Federal Reserve Board resulting in injury to the business and property rights of the plaintiffs not lawfully under their jurisdiction constitutes a combination or conspiracy that a Court of Equity would enjoin.

Wherefore the appellants pray that said decree may be reversed in all things. (Signed) Alex. W. Smith, Orville A. Park, Theodore H. Smith, Solicitors for Appellants.

Appeal Bond and Order Approving Same.

[Filed November 18th, 1922.]

IN THE

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3906.

[Title omitted.]

From the Circuit Court of Appeals for the Fifth Circuit to the Supreme Court of the United States.

Know all men by these presents:

That we, American Bank & Trust Co., et al., appellants
777 as principals, and the U. S. Fidelity & Guarantee Co., of Baltimore, Md., as surety, are held and firmly bound unto the Federal Reserve Bank of Atlanta, et al., in the sum of Five Hundred and 00/100 Dollars, to be paid to the Federal Reserve Bank of Atlanta, et al.; we bind ourselves and each of our heirs, executors, administrators, and successors jointly and severally firmly by these presents.

Sealed with our seals and dated the 18th day of November, A. D. 1922.

Whereas, the appellants in the above entitled suit have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Fifth Circuit on the 3rd day of November, A. D. 1922.

Now, therefore, the condition of this obligation is such that if the said appellants shall prosecute said appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue. American Bank & Trust Company et al., Principals, by (Signed) Alex. W. Smith, Their Solicitor of Record. U. S. Fidelity & Guarantee Company, Surety, by (Signed) Frank H. Reynolds, Attorney in Fact, [Seal.]

The foregoing bond is approved this 18th day of November, A. D. 1922. (Signed) R. W. Walker, U. S. Circuit Judge, Fifth Circuit.

778 **Stipulation as to Amount Involved.**

(Filed November 27th, 1922.)

IN THE

Supreme Court of the United States.

[Title omitted.]

Appeal from the United States Circuit Court of Appeals, Fifth Circuit.

It is hereby stipulated and agreed by and between leading Counsel for appellants and appellees in the above stated case that the amount involved and in controversy therein exceeds the sum of One Thousand Dollars ($1,000) exclusive of interest and costs.

It is further agreed that this stipulation may be filed and become part of the record in said case.

This the 18th day of Nov. A. D. 1922. (Signed) Alex W. Smith, Solicitor for Appellants. (Signed) Hollins N. Randolph, Robt. S. Parker, Solicitor- for Appellees.

779 **Clerk's Certificate.**

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 758 to 778 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3906, wherein the American Bank & Trust Company, et als., are appellants, and the Federal Reserve Bank of Atlanta, et als., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 757 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 29th day of November, A. D. 1922. Frank Hastings Mortimer, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal of United States Circuit Court of Appeals, Fifth Circuit.)

780 **Citation and Service.**

[Filed Nov. 18, 1922.]

UNITED STATES OF AMERICA,
Fifth Circuit:

United States Circuit Court of Appeals, Fifth Circuit.

To the Federal Reserve Bank of Atlanta et al.:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, District of Columbia, thirty (30) days after the date of this citation pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit wherein the American Bank and Trust Company et al. (said suffix "et al." including several hundred banks parties plaintiff and appellant in said cause which by stipulation are referred to by said suffix as fully as if their names were set out in full) are appellants and the Federal Reserve Bank of Atlanta et al. (said suffix "et al." including all of the other parties defendant and appellees in said cause which by stipulation are referred to by said suffix as fully as if their names were set out in full) are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Hon. R. W. Walker, Judge of the United States Circuit Court of Appeals for the Fifth Circuit this 18th day of November, A. D. 1922. R. W. Walker, Judge United States Circuit Court of Appeals for the Fifth Circuit.

Service acknowledged—copy received—this 18 day of November, A. D. 1922. Hollins N. Randolph, Robt. S. Parker, Solicitors for Appellees. John W. Davis, of Counsel.

780½ [File endorsement omitted.]

781 IN THE

Supreme Court of the United States.

[Title omitted.]

Stipulation.

[Filed Dec. 2, 1922.]

It is agreed that the portion of the original transcript of the record in the United States Circuit Court of Appeals for the Fifth Circuit, in the above stated case, embraced in pages 37 to 56 inclusive and

the top of page 57 down to the caption "Amendment to Original Bill" on said page 57, relates to proceedings for the removal of said case from the Superior Court of Fulton County, Georgia, to the District Court of the United States for the Northern District of Georgia; that no question of jurisdiction or of the propriety of said removal proceedings remains in said case; and that said portion of said transcript need not be reproduced in the printed transcript of the record in the Supreme Court of the United States. Alex. W. Smith, Appellants' Solicitor. Hollins N. Randolph, R. S. Parker, Solicitors for Appellees. John W. Davis, of Counsel.

[File endorsement omitted.]

Endorsed on cover: File No. 29,267. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 717. American Bank & Trust Company et al., appellants, vs. Federal Reserve Bank of Atlanta et al. Filed December 2nd, 1922. File No. 29,267.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 717.

AMERICAN BANK AND TRUST COMPANY ET AL.,
APPELLANTS,

versus

FEDERAL RESERVE BANK OF ATLANTA ET AL.,
APPELLEES.

BRIEF FOR APPELLANTS.

(NOTE.—The bulk of this document consists of an appendix containing parts of the record for convenient reference by the court.)

ALEXANDER W. SMITH,
ORVILLE A. PARK,
THEODORE H. SMITH,
Solicitors for Appellants.

SMITH, HAMMOND & SMITH,
ATLANTA, GEORGIA,
Of Counsel.

INDEX.

	Page.
Statement of the case	1
Points in the argument	15
Interpretation of Federal Reserve Act	16
Constitutionality of section 13 of Federal Reserve Act	27
On the facts	35
Issues defined	46
Proof analyzed	51
Resolutions of defendants' directors	53
Right to relief rests on the facts existing when bill was filed	65
Error in rejecting evidence	67
Error in application of rule 58	72
Error in disallowing intervention	74
Conclusion	75

Table of Cases.

American Bank & Trust Co. v. Federal Reserve Bank, 256 U. S., 350 ..... 10, 16, 22, 49, 60
Attorney General v. Great Northern, 4 D. G. & Sm., 75 65
Attorney General v. Railroads, 35 Wis., 425 23
Attorney General Opinions, 31 O. A. G., 245 ..... 16, 23, 24
Berry v. Davis, 242 U. S., 468 65
Blair v. Chicago, 201 U. S., 400 23
Brookings State Bank v. Fed. Res. Bank, 281 Fed., 222 ..... 22, 47, 68
Burton v. U. S., 196 U. S., 283 32
City of Alpine v. Kelley, 56 N. W., 941 23
City of Madison v. Madison Gas Co., 129 Wis., 249 23
Conn. Mutual Life v. Hillmon, 188 U. S., 208 69
Dinsmore v. Southern Express Co., 183 U. S., 115 65
Duplex Printing Co. v. Deering, 254 U. S., 464 65
Farmers Bank v. Federal Res. Bank of Cleveland, 11/14/22. 286 Fed., 566, 610 ..... 47, 68
Federal Reserve Act, Dec. 23, 1913, 38 Stats., 263 ..... 17, 18
Federal Reserve Act, Sept. 7, 1916, 39 Stats., 752 ..... 17, 26
Federal Reserve Act, June 21, 1917, 40 Stats., 232 ..... 18, 26
Hardie Tynes v. Cruse (Ala.), 66 So., 660 23

Page.
Hitchman C. & C. So. v. Mitchell, 245 U. S., 229 69
Hogan v. Nashville Ry., 174 S. W., 1121 23
Jones v. Montague, 194 U. S., 147 65
Mills v. Green, 159 U. S., 651 67
National Bank v. Matthews, 98 U. S., 201 23
Plattsville v. Galina, 43 Wis., 493 66
Pleasants v. Fant, 22 Wall., 116 69
Quirk v. Quirk, 259 Fed., 297 73
So. Pac. Term. Co. v. I. C. C., 219 U. S., 498 66
Tenn. v. Condon, 189 U. S., 64 65
Terhune v. Midland Ry., 36 N. J. Eq., 318 65
Terhune v. Midland Ry., 38 N. J. Eq., 423 67
Trans-Mo. F. Asso. Case, 166 U. S., 290 66
Tucker v. Howard, 128 Mass., 361 65
Vegetahn v. Guntner, 167 Mass., 62 23

Digest of the Argument.

Meaning and history of section 13, Federal Reserve Act 1, 17, 19
Universal par clearance not contemplated therein 17
Right to charge exchange preserved 17, 19
Exemption of Federal Reserve banks intended to protect the revenues of the Government and not to interfere with ordinary charges for service of transporting funds in commercial transactions 21, 34
Handling checks on non-member banks is optional with Federal Reserve banks 20, 24, 25
If legitimate exchange charges thereon can be exacted, Federal Reserve banks are forbidden to handle them except as agents for collection entitled to charge expense of collection to their principals 25, 31
Seeking out checks through the operation of the par list to be used as coercive weapons against non-member banks is wholly without warrant in the Federal Reserve Act 33
Denial of compensation for the service of transporting funds or credits is violative of the Fifth Amendment to the Federal Constitution 27
If the prohibition of such compensation is read into the Hardwick Amendment, it is unconstitutional 28
The utmost constitutional limit of this prohibition could not embrace non-member banks unaffiliated with the Federal Reserve System 28

Page.

As to member banks such prohibition would have to be restricted to charges for transporting funds of the Government itself as a sort of franchise tax on Federal corporations 28

Employment of the exemption from exchange charges on Government checks and funds for the benefit of member banks on commercial transactions is a prostitution of the law..... 27, 31, 33

Clearing-house functions radically different from collection agencies 3

Par-clearance campaign defined by the Governor of the Federal Reserve Board..... 5

Congress having failed to penalize non-assenting banks, coercion became unavoidable if persuasion failed..... 6, 7

Everything done to enforce universal par clearance received full approval of Federal Reserve Board..... 7

Filing of original bill in this case and the occasion therefor.... 7

Three thousand State banks remained unconvinced and recalcitrant 7

A large percentage of these were located within the sixth district 9

War on these outstanding banks declared by defendants... 8

Original bill dismissed on motion..... 10

This judgment reversed by the Supreme Court of the United States..... 10

At the trial on the merits all substantial allegations of the bill fully established by the corporate records of defendants..... 10, 35

Embarrassing, annoying, and expensive methods conceded 8, 44, 48

Collecting together of practically all floating checks through the par list admitted..... 40, 42, 44

Intention to present these checks at counter for payment in cash reiterated..... 38, 40, 55, 63

That such a course would be intolerable confessed..... 12, 38, 58

Death-bed repentance and promise to accept exchange drafts in the future filed in amended answer at the trial.... 12, 56, 61

The latter course as coercive as the former, in the opinion of the Governor of the Federal Reserve Board..... 13

Injunction denied except as to publication of the names of non-par banks on the par list, permitting publication by description that would answer the same purpose..... 11

The motive or intention of a corporation can be expressed through corporate action or official declaration in consonance with corporate action, and in no other way..... 56

Page.

The motive objects and purposes of the defendants is plainly set forth in the resolutions of the board of directors of defendant bank..... 53

And authoritatively reiterated in the official writings of its officers (App., 18)..... 31

Their personal opinions, although expressed under oath, cannot modify these official corporate declarations... 45, 54, 61

Nor can their subsequent disclaimers rescind these resolutions or retract these official declarations made pursuant to these resolutions..... 54, 64

The original policy of a coercive campaign for universal par clearance originated with the Federal Reserve Board..... 5

It was ratified by the twelve reserves banks in conference. 5, 51

It was put into effect progressively following lines of least resistance 5, 47

It was speedily effective with a majority of the banks, and resistance was rapidly overborne in a majority of Federal Reserve districts..... 6, 51

Progress of the campaign was arrested by this litigation..... 6, 47

This interruption was deemed only temporary, although it was set up in apology for the delay of final success by the Governor of the Federal Reserve Board in circular letters to all the Federal Reserve banks..... 6, 47

The decision of the Supreme Court (256 U. S., 350) was sought to be minimized and its effect sought to be avoided by a tactical move, but the principles of the campaign were reasserted under another form..... 12, 78

Prior to that decision coercive measures involved in concentration of checks through the par list and demand of cash in their payment were employed under a claim of right and as a substitute for the failure of Congress to enact coercive legislation 7

The principles of that decision are:

(*a*) The existence of an ulterior purpose in presentation of checks on non-member banks for payment at their counters..... 50

(*b*) The collection together of such checks as a means of carrying out that purpose..... 50

(*c*) The injury flowing from such a course to the banks subjected thereto and the concessions sought as a means of avoiding that injury..... 50

The existence of all these elements is established in the record by the admissions of the defendants in their answer..... 51

Page.

And by the corporate minutes and records of the defendant reserve bank 53

And by the official writings of the Governor of the Federal Reserve Board (App., 18) 5

The effort to escape the import of these indisputable records by the oral testimony of two of the individual defendants is futile 44

Resolutions of defendant bank's directors 53

Recital of rapid progress of the campaign 53

Laggard pace of the sixth district 53

Recent conference resolving on greater speed 53

Mandate to officers to adopt immediate plans for effective establishment of par clearance regardless of expense 54

These plans were restricted to checks on non-par remitting banks 54

Official plans announced through Exhibit B signed by the Governor (App., 20) 8

Details supplied by the Deputy Governor involved,

(*a*) Request for voluntary submission,

(*b*) Threat of arbitrary publication on the par list,

(*c*) As soon as checks came in response to this publication same were to be presented to drawee's counter for payment in cash 59

Arrangements for collection either

(*a*) through personal agents,

(*b*) through the express company,

(*c*) through competitor banks, who were baited by the promise of surreptitious information as to the depositors of competitors 52

All of the foregoing channels of operation shown to have been actually employed, supplemented by the threat to more than a thousand banks that embarrassing, annoying, and expensive methods of collection outside of usual bank channels would be employed unless prompt submission of the non-member bank was declared and reduced to a written agreement to remit at par through regular channels 64

The coercive effect of such methods of collection is obvious and is admitted. The head of the system says: "If this is coercion, it is unavoidable" 44

Injunction to stop this sort of warfare is demanded 60, 67

Plaintiff's right to injunction is determined by the facts shown to exist at the time the bill was filed 65

Page.

Defendants cannot escape judgment by changing their methods and intentions subsequent to the filing of the bill. They may undergo another change of mind after the injunction is finally denied..... 65

Evidence of the maneuvers of the other reserve banks in the common campaign conducted with the common purpose of accomplishing the common object—an objective that cannot be reached if any division of the army fails—is plainly admissible under the doctrine of the Hitchman Coal Case, 245 U. S., 229 ..... 68, 69

Rule 58 requires each interrogatory to be answered separately; joint answers do not conform to the rule..... 72

The bill having been filed for the benefit of a class and enlarged to include that class in all the Federal Reserve districts, the intervention by members of that class in districts other than the sixth should have been allowed..... 74

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BRIEF FOR APPELLANTS.

Statement of the Case.

In the summer of 1917 Congress passed an amendment to section 13 of the Federal Reserve Act commonly referred to as the Hardwick Amendment. Prior to that time there was no provision for the relation of State banks with the Federal Reserve System except through membership—a situation with which the non-member banks were well content, and anxious to maintain. This amendment provided for a voluntary rela-

tion between non-member banks and Federal Reserve banks for the purposes of exchange and collection only, to be effected by the non-member banks keeping deposits with the Federal Reserve banks and maintaining balances sufficient in amount to cover all cash items in transit and in process of collection. The amendment expressly reserved to all banks, whether members or non-members, the right to charge for the service of transmitting proceeds of checks from one point to another, commonly called exchange. The amendment took its name from Senator Hardwick who, while the Senate had under consideration the House bill on the same subject, offered an amendment expressly reserving the right to charge exchange. The Senate and House disagreeing, the bill went to conference and, while in conference, the Governor of the Federal Reserve Board called the attention of the Chairman of the House Committee on Banking, who was one of the conferees, to a statement made by the Governor of the Federal Reserve Bank of New York that the proceeds of the sale of the first Liberty Bonds then being floated could be covered by local checks on any bank in the United States. That it was probable, if these banks availed themselves of the right to charge exchange against the United States Government, the aggregate of these charges on this issue of bonds would amount to about a million dollars. Following this information, and to save this expense to the Government, the conferees tacked onto the Hardwick amendment a final clause prohibiting exchange charges against Federal Reserve banks. The bill was finally approved in June, 1917. After considering this legislation for about a year, the Federal Reserve Board came to the conclusion that it carried a mandate to the Board to establish throughout the United States a

system of "universal par clearance." By this the Board meant that no bank anywhere in the United States, whether a member of the Federal Reserve System or associated with its clearing machinery, or entirely disconnected with it, would be permitted to charge anything for the service of transporting from one place to another funds represented by the face amount of the millions of checks in constant circulation throughout the country. Having reached this conclusion and having had repeated conferences in Washington between the governors of all the Federal Reserve banks and the Federal Reserve Board, it was determined to put into effect this scheme of universal collection of checks at par.

It will prevent confusion of thought if the distinction between clearance of checks through clearing-houses and the collection of checks drawn upon banks not members of the clearing-houses is kept clearly in mind. Under the power vested in the Board by section 16 of the Federal Reserve Act it established a Gold Settlement Fund operated under the supervision of the Board and kept in Washington as a medium for the clearance of items between Federal Reserve banks. This process is clearance pure and simple. The word "clearance" can be rightly used only in connection with the liquidation, through a common center, of balances after debiting and crediting all cash items for or against common membership in the clearing-house (App., 95). Inasmuch as less than one-third of the banks of the United States are members of the Federal Reserve System, universal "clearance" of checks through that system is an impossibility. However, the word "clearance" has been erroneously applied to the collection of checks drawn on banks outside of the system, the same as to true clearance

of items between the banks who are members of the system. The establishment of "universal par clearance," therefore, necessarily involved the creation of machinery not only for *clearance* between members, already established through the Gold Settlement Fund, but for the *collection* of checks on all banks not members of the system. This was sought to be accomplished by each of the Federal Reserve banks and branches thereof undertaking to collect for any member of the system, whether in the district of the particular Reserve bank or not, any check coming into its hands, drawn on any bank outside the system. The clause tacked onto the Hardwick amendment prohibiting exchange charges against Federal Reserve banks was to be employed as a legal excuse for compelling any outside bank to remit free of charge the proceeds of checks (drawn upon it) from its own banking-house to any Federal Reserve bank. This was accomplished by the expedient of preparing and circulating to all the banks affiliated with the system a "par list" in which the names of the outside banks were listed upon whom enforced collection at par was to be brought about. By this process, practically all checks afloat throughout the United States, drawn on banks disconnected with the Federal Reserve System, that reached the hands of any bank that was a member of, or affiliated with, the system, converged and accumulated in the hands of the Federal Reserve bank of the district in which the drawee banks were located. The first step in the process was to lay before the outside banks the alleged advantages of affiliation with the Federal Reserve banks' collection system and solicit voluntary acquiescence in rendering the free service involved. After a limited amount of educational effort and solicitation, any bank that still re-

fused to render this service without compensation was placed upon the par list and when its checks were, through this instrumentality, assembled in the hands of the Federal Reserve bank of its district, they were presented at the counter of the bank and payment thereof demanded in cash. That this irregular method of collecting bank checks, as between banks, was employed consciously for the purpose of coercing submission to the demands of the Federal Reserve banks was freely admitted, and responsibility for it placed upon the Hardwick amendment. To use the language of the Governor of the Federal Reserve Board (App., 23):

> "Thus it came about that the Federal Reserve Banks found themselves in possession of checks drawn upon non-member banks which they could not send to the banks upon which the checks were drawn for the reason that those banks have declined to remit at par, and it became necessary, therefore, as the law does not provide any penalty upon non-member banks for refusing to remit at par, for the Federal Reserve banks to begin a campaign of education to induce non-member banks to remit at par, or failing this, to provide themselves with some other means of collecting checks drawn upon non-assenting banks. * * * Until the Federal Reserve Act was amended in June, 1917, the Federal Reserve banks had no mandate for undertaking to collect checks on non-member banks at par and their activities with respect to clearance were devoted mainly to the collection of checks on member banks, but after the passage of the Hardwick amendment, with the proviso above quoted, it became the duty of the Federal Reserve banks to undertake to establish a complete check clearing system, including checks drawn on non-member banks as well as on members. There were approximately

20,000 non-member banks in this country and at the time the act was amended a large majority of them were firmly committed to the policy of making an exchange or service charge for remitting for checks drawn upon them. It was clearly impracticable, *in the absence of some legislation penalizing banks* which would not remit at par, to establish a complete clearing system overnight. It was therefore determined to begin a progressive campaign of education along the line of least resistance. A large majority of the banks in New England have been for the past twenty years remitting to banks of the Boston clearing-house at par, and it was decided to establish in that district the first complete Federal Reserve clearing system. A few banks in Vermont objected, but within a few months they all came into line. The system was then extended to the New York district. In a part of that district *the opposition was more determined and it was necessary, for a while,* to make collections on some of the banks through express companies. Then the system was extended to the Philadelphia district and afterward to the Chicago, Cleveland, Kansas City, and Dallas districts as well as to certain States in other districts. It was deemed wise *not to force matters* by making collections through express companies or other agencies until non-member banks had had the whole situation fully explained to them and were given an opportunity of agreeing to make remittance at par. Then when the majority of the banks in the Federal Reserve district had so agreed, arrangements were made to collect on non-assenting banks *by means of agencies,* announcement then being made that the system was operating throughout the entire district or in particular states in the district."

The Governor then discloses pronounced opposition in Minnesota, Wisconsin, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, North and South Carolina. The Governor of the Federal Reserve Board then proceeds in his history of the matter as follows:

> "The Board is doing everything in its power to have the clearing system applied equally to all sections and all banks. Including member banks, there are about 30,000 banks in the United States and 27,000 of them are now (April 1, 1920) remitting at par. The 3,000 which declined to remit are making a determined effort to defeat the purpose of the Federal Reserve Act with respect to country-wide check-clearing system and unless Congress should be willing to enact some law making it decidedly to the interest of the banks to remit at par, just as in 1865, by the exercise of its taxing power, Congress made it to the interest of the State banks to retire their State bank notes, it is difficult to see how it is possible to accelerate the present rate of progress in the development of a complete nation-wide check clearing system through the Federal Reserve banks" (App., 25).

The appellants in this case are a part of the 3,000 banks making the determined effort referred to by the Governor of the Federal Reserve Board to defeat the purpose of the Federal Reserve banks to compel free service to a system with which appellants are in no manner connected. That effort culminated in filing the original bill in this case on the 15th of January, 1920. That bill set forth the campaign of the Federal Reserve System and detailed the coercive methods that have been employed by the Federal Reserve banks in

other districts beginning in Boston and sweeping westward across the country. A conspiracy is charged against defendants, acting in concert with the Federal Reserve banks in other districts under instructions of the Federal Reserve Board, to compel State banks to remit at par. Their action in filing this bill at that particular time was precipitated by the receipt from the defendant Federal Reserve bank of a form letter dated December 23 (*et seq.*), 1919, copy of which is attached as Exhibit "B" to the bill (App., 20). That letter informed appellants that in the view of the defendant bank the time had arrived for action to enforce the scheme that had been agreed upon and put into effect in the other districts. Appellants were requested to join the vast army of par-remitting banks voluntarily, but in case of refusal, they were advised by the defendant bank that it would incur any cost necessary to carry out its purposes and it would be forced to adopt other methods of collection *outside of usual banking channels* that would prove embarrassing, annoying, and expensive to appellants. Enclosed with this form letter was a copy of a letter which had been circulated by the Federal Reserve Board to all Federal Reserve banks, signed by the Governor of the Federal Reserve Board, that checks on outside banks would be collected by the Federal Reserve banks in regular banking channels if exchange charges were waived, but otherwise through some other means of collection, *no matter how expensive*. In this letter, the action of the various Federal Reserve banks extending their par list was commended by the Federal Reserve Board and the Federal Reserve banks who had been able to *"put over"* the scheme in their entire districts were particularly complimented. The Federal Reserve Board announced the policy of ultimately establish-

ing a universal or national system of clearing bank checks and drafts at par, but claimed that the one obstacle to the immediate inauguration of such a system is the ability of the small country banks to maintain balances with some city correspondent by means of which checks deposited with them will be handled at par, and through which they can remit in exchange to cover checks drawn on them through the mails; that but for this facility of doing business with institutions of their own selection, there is no doubt that many more of such banks would avail themselves of the privileges tendered by the Federal Reserve banks (App., 18).

On the trial, it developed that this form letter to the appellants was sent out pursuant to solemn resolutions of the Directors of the defendant Reserve bank hereinafter quoted in full, which recited that the Atlanta District was behind its fellows in putting this scheme into operation, and instructing the officers of the bank to adopt plans and incur all necessary expense in order to effectively arrange for the par clearance of checks received by the Atlanta bank. Many of the banks thus addressed yielded without further contest, as will appear from their letters in the record. They recognized and bowed to the power of unlimited money. But the plaintiffs, now including several hundred banks, were of the opinion that the service they were called upon to render was worth what they charged for it; that the law expressly recognized the justice of such a charge; that there was no reason for the Federal Reserve banks to handle their checks at all, and that their seeking out checks on the appellants and concentrating them in their hands through the instrumentality of the par list in order that, by this accumulation, excessive demands for currency could be made upon the banks re-

fusing to succumb, was an unwarranted and unlawful exercise of the functions of the Federal Reserve banks and would be enjoined by a court of equity.

The defendants, admitting the facts alleged in the bill and asserting their unqualified right to do the things complained of, filed a motion to dismiss in the nature of a general demurrer, which motion was granted by the United States District Court, and that decree affirmed by the Fifth Circuit Court of Appeals, and the case came into the Supreme Court of the United States and was decided on May 16, 1921 (256 U. S., 350), against the contentions of the defendants as to their unqualified right to so handle checks on non-assenting banks for the purpose of compelling this free service. Such a method of handling checks through channels wholly outside of the regular banking business and for the avowed purpose of carrying out a concerted scheme of establishing, by force if necessary, universal par clearance of checks in the United States was held to be unjustifiable warfare on these comparatively feeble competitors who, as legitimate creations of their respective States, were entitled to conduct their business as it had been formerly conducted without forcible interference by the Federal Reserve banks. Thereupon the case was remanded for trial on the facts.

Every substantial allegation of the bill has been either admitted by the answer of the defendants, or has been established by the corporate records and official documents of the defendants. Nevertheless, the trial judge found that there was no intention of coercion in any of the methods actually employed, and confess[illegible] contemplated, by the defendants and that no proof w[illegible]rthcoming that the defendants had wilfully held up presentation of checks for the

purpose of accumulating an amount of liability thereon that would embarrass the drawee banks in paying in currency the amount called for. Thereupon the injunction was denied save as to the publication on the par list of the specific name of a bank that had refused to remit at par, leaving to the defendant the right to publish to the outside world that the Federal Reserve bank would undertake the collection of all checks drawn upon *any bank in the town* where any of appellants did business. (It is obvious that the latter method is as effective in enticing into the hands of the Federal Reserve banks checks on a bank located in such town as would be the publication of the name of the bank itself.) This decree has been affirmed by the Fifth Circuit Court of Appeals and the case is again before the Supreme Court of the United States on appeal, with the whole record before it.

Notwithstanding the recognized rule that appellate courts will ordinarily decline to reverse a decree based on a question of fact, if there is any evidence to support it, appellants respectfully submit that the case at bar is not within that category. If it be admitted that there was no proof of wilful and intentional withholding presentation of checks for the purpose of embarrassing the appellant banks, it remains true that the allegations of the bill are not confined to this narrow compass. This was but one of many embarrasing, annoying and expensive methods of collection which the defendants were charged with intention of employing. The admitted result of the publication of the fact that the defendant Reserve bank would undertake the collection free of charge of all checks drawn upon any of the appellants, was the collecting together in the hands of the defendant bank of practically all checks that floated outside the places of residence

of the banks upon which drawn. This sort of accumulation swelled the amount of the demand for currency as effectually, and produced as much embarrassment, as if the checks had been withheld for presentation until such accumulation resulted. The embarrassment arose from the demand for currency continuously, day after day, as effectually as if presentation had been withheld for the purpose of increasing the amount of these demands on any given day. In other words, the law of averages, which this court has said all banks have a right to rely upon in the conduct of their business, was completely upset and the proof is undisputed (it even being admitted by Governor Wellborn of the defendant Reserve bank) that such a method of presentation and collection of checks would be so embarrassing, annoying, and expensive to the bank upon which drawn as that such a bank would be compelled, in choosing the lesser of two evils, to remit the proceeds thereof at par. This result appellants conceive to be the essence of their cause of action. The decision of this court, in this case, confirms that conception.

Defendants, however, in order to avoid the logical result of this decision have entered a formal disclaimer in their amended answer of any intention to demand currency, and of their willingness to accept in payment of checks, thus collected together and presented, a draft on the reserve deposits of the bank upon which such checks are drawn. However, they reserve the right to dictate the kind of exchange that would be acceptable, and retain discretion to decline to receive exchange and demand the currency in any particular case where, in the opinion of the agent presenting the checks, the Federal Reserve bank might incur some risk in accepting such a draft. It needs no great discernment to

discover that, through this method, intolerable embarrassment, annoyance, and expense could be inflicted. Moreover, the effect of such a method would necessarily be to deprive the drawee banks of their legitimate revenues derived from exchange, and the Governor of the Federal Reserve Board has expressed the opinion that this method would prove as coercive as the method of demanding cash only. He says (Tr., 300):

> "If it were the idea that presentation of checks by the agent for payment in cash over the counter would ultimately force a dissenting non-member bank to remit at par, it is my opinion and the opinion of others well qualified to express an opinion, that the presentation of such checks by the agent and the acceptance of a solvent check drawn by that bank on some other bank, *provided there was no exchange* charge permitted, would ultimately have the same effect. In other words, if a bank in some country town in Georgia had checks presented to it every day by a representative of the Federal Reserve bank at Atlanta and cashed them, if it is the purpose of the Atlanta bank to induce by such methods the country bank to remit at par, I think that purpose could be brought about just as effectively by instructing the agent to accept that bank's check on Atlanta as cash, because what the country bank is after is the profit on the transaction and if it does not make a profit, in course of time, it will get tired of having this person come around every day presenting these checks and having to draw a check. I do not see any distinction between the objects that the Federal Reserve banks are supposed to have in view and why one means is not just as effective as the other."

Since the avowed object of the Federal Reserve System from top to bottom is to force the establishment of "universal par clearance," the change of heart, if it be such, indicated by the modified plans set forth in the answer (filed during the progress of the trial) will leave the defendants with all the weapons necessary to accomplish their original purpose. Certainly, it will deprive plaintiffs of their legitimate service charges which are expressly safeguarded by the Hardwick amendment itself, to say nothing of the Constitution.

"You take my life when you do take the means whereby I live" (Mcht. of Venice).

Appellants will insist in the argument that the object, purposes and true meaning of the Hardwick amendment have been wholly misconceived by the Federal Reserve System and that all of this controversy springs out of that misconception.

Plaintiffs in the original bill were limited to non-member banks in the State of Georgia. In March, 1920, it was enlarged by amendment to include as a class non-member banks throughout the Sixth Federal Reserve District (Tr., 22). In January, 1922, by a second amendment it was enlarged to include as a class all non-member banks in the United States (Tr., 51). After the allowance of the first amendment many non-member banks outside of Georgia, but within the Sixth District, came into the case by intervention. After the allowance of the second amendment seven non-member banks outside the Sixth Federal Reserve District tendered an intervention praying to be made parties plaintiff, which the court refused to allow (Tr., 358).

Plaintiffs tendered in evidence some thirty sets of interrogatories disclosing the very severe methods adopted in

other districts in an effort to carry out the policy of the Federal Reserve Board to establish universal par clearance. This evidence was all rejected on the ground that it was *res inter alios acta,* and this raises a question of law that will be discussed in the argument.

Points to be Argued.

The questions before the court, therefore, resolve themselves into three general divisions:

1. WHAT IS THE TRUE INTERPRETATION OF SECTION 13 OF THE FEDERAL RESERVE ACT AS AMENDED?

2. ARE NOT ALL THE SUBSTANTIAL ALLEGATIONS OF THE BILL PROVEN BY THE UNDISPUTED EVIDENCE IN THE CASE AND THEREFORE INJUNCTION SHOULD HAVE BEEN GRANTED IN ACCORDANCE WITH THE PREVIOUS DECISION OF THE SUPREME COURT?

3. WAS NOT THE EVIDENCE OF THE ACTIVITIES OF OTHER FEDERAL RESERVE BANKS IN CARRYING OUT THE COMMON ENTERPRISE ADMISSIBLE AGAINST THESE DEFENDANTS AGAINST WHOM THE BILL WAS FILED TO *PREVENT THREATENED INJURY* BEFORE THE INJURY WAS ACTUALLY INFLICTED?

The subsidiary questions of practice spring from—

(4) ADMISSION OF THE JOINT ANSWERS OF DEFENDANTS TO INTERROGATORIES PROPOUNDED UNDER NEW EQUITY RULE 58.

(*B*) REJECTION OF THE INTERVENTION OF NON-MEMBER BANKS OUTSIDE THE SIXTH DISTRICT.

First.

WHAT IS THE TRUE INTERPRETATION OF SECTION 13 OF THE FEDERAL RESERVE ACT AS AMENDED?

(*Assignments of Error Nos. 12, 13, 18, 19, 20, 21, 22.*)

(*Tr., 481 et seq.*)

If section 13 of the Federal Reserve Act had been interpreted in accordance with the opinion of Attorney General Gregory furnished the President in March, 1918 (31 O. A. G., 245), the par-clearance campaign could not be sustained as a matter of law. If the trial court had applied the principle announced by the Supreme Court on the former appeal of this case (256 U. S., 350) the par-clearance campaign could not be sustained as a matter of fact.

That the whole controversy as to exchange charges grows out of a wrong interpretation and application of section 13 of the Federal Reserve Act is apparent from the statement of defendants' counsel in their brief in the former appeal (pp. 82 *et seq.*).

They contended then and will probably contend again that the purposes of Congress in amending section 13 was to provide for universal par clearance. Par clearance is meaningless if it does not import free service in remitting proceeds of collections. Payment for that service is called "exchange." Therefore, if it was the purpose of Congress

to provide for universal par clearance it must have intended to prohibit exchange charges. But the proviso to the section expressly recognizes and safeguards these very charges. We thus have legislative protection of exchange charges as between commercial banks and attempted prohibition of exchange charges against Federal Reserve banks—both in the same section of the law and in immediate juxtaposition. Plaintiffs contend that each provision is limited to its respective sphere. Defendants are driven to the contention that one destroys the other. Under the cardinal rules of interpretation of statutes the latter result will not be sanctioned if it can be avoided. Both provisions will be given effect if possible. Is that possible?

Look at the setting in which the legislation was passed. Section 13 of the original act (Dec. 23, 1913; 38 Stats., 263) authorized the Reserve banks to receive deposits *from member banks only,* in (1) money, (2) National Bank notes, (3) Federal Reserve notes, (4) checks on solvent members.

The same act authorized Federal Reserve banks to receive on deposit from other Federal Reserve banks, only and *solely for exchange purposes,* the same description of money and checks.

By the amendment of September 7, 1916 (39 Stats., 752), Federal Reserve banks were authorized to receive from members only (1) money, (2) National Bank notes, (3) Federal Reserve notes, and (4) checks payable on presentation *without the restriction that such checks should be drawn on solvent member banks.*

In like manner the authority to receive on deposit from other Federal Reserve banks, solely for the purposes of exchange or collection, the same description of money and

checks with the restriction that the checks enumerated must be drawn on banks *within the district of the receiving bank.* (See reprint of the section as amended, App., 82.)

Section 16 of the original act (38 Stats., 268), which has never been amended, requires Federal Reserve banks to receive on deposit at par (not for collection) from member banks checks drawn by any of the depositors in such receiving bank or from other Federal Reserve banks checks drawn by any of the depositors in such other Federal Reserve banks or by any of the depositors in the members of such other Federal Reserve banks.

> "Nothing herein contained shall be construed as prohibiting a member bank from charging its actual expense incurred in collecting and remitting funds, or for exchange sold to its patrons. The Federal Reserve Board shall, by rule, fix the charges to be collected by the member banks from its patrons whose checks are cleared through the Federal Reserve bank and the charge which may be imposed *for the service of clearing or collection rendered by the Federal Reserve bank*" (38 Stats., 268).

The Board is then authorized to regulate the transfer of funds and charges therefor among Federal Reserve banks and their branches, and may itself (the Board, not the banks) exercise the functions of a clearing-house for the Federal Reserve banks (which it has done through the Gold Settlement Fund), and may require each Reserve bank to exercise the function of a clearing-house *for its member banks.*

Between the amendment of September 7, 1916, and the Hardwick amendment of June 21, 1917 (40 Stats., 232),

war was declared by the United States against Germany. While the Hardwick amendment was under discussion in Congress the Government was aflame with war preparations including the flotation of the first Liberty bonds under the Act of April 24, 1917 (40 Stats., 35), authorizing five billions of dollars. Two billions of this authorized issue were being marketed, and the conferees on the Hardwick amendment were officially notified by the Governor of the Federal Reserve Board in a letter to Hon. Carter Glass, dated May 10, 1917, that checks of subscribers to these bonds would be drawn on local banks in an aggregate that at 10 cents per hundred dollars exchange would cost the Government approximately a million dollars (Appendix, 84). Thereupon and thereafter the attempted prohibition against charging exchange against Federal Reserve banks was added as the concluding proviso to the bill.

The Hardwick amendment added the following provisions to section 13 as amended September 7, 1916, to wit:

1. Non-member banks were authorized to participate as clearance members by becoming depositors in the Federal Reserve banks of their respective districts in an amount sufficient to offset items in transit held for their accounts by the Federal Reserve banks.

2. *Solely for the purpose of exchange or collection,* Federal Reserve banks were authorized to receive from such depositing non-member banks the same description of money and checks that they were authorized to receive from banks holding full and complete membership.

3. "That nothing in this or any other section of this (Federal Reserve) act *shall be construed as* prohibiting a

member or non-member bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, *for collection or payment of checks and drafts and remission therefor by exchange or otherwise.*"

4. No such charges for collection or payment of checks and remission therefor shall be made against the Federal Reserve banks.

The result is that up to September 7, 1916, Federal Reserve banks had no authority to receive any check on any non-member bank, either on deposit or for collection. After that date it was authorized, *but not required,* to receive from members and other Reserve banks, only, checks generally that were payable on presentation, but the usual exchange charges as between banks, whether members or non-members, and whether against Reserve banks or commercial banks, were preserved without exception. On June 21, 1917, Reserve banks were authorized to receive *for the purpose of exchange or collection only* checks payable on presentation from any non-member bank in their respective districts that maintained clearance deposits with them. In connection with, and as a part of this extension of authority, the right of *members* and *non-members* to charge exchange was meticulously preserved in the original form of the amendment.

In conference, subsequent to the statement by the Governor of the Federal Reserve Board that these exchange charges on local checks of subscribers to Liberty bonds would

probably aggregate a million dollars, the last proviso was added attempting to prohibit exchange charges against Federal Reserve banks.

Congress meant by the words of this prohibition:

Either to safeguard the expenses of the Reserve banks in the exercise of these enlarged functions to undertake the collection of checks payable on presentation,

Or it intended surreptitiously and indirectly to enact a prohibition against a legitimate charge it had expressly and repeatedly recognized and safeguarded in behalf of all banks, a property right protected by the letter of the Constitution itself.

The act as amended:

Either directs the Reserve banks to so exercise *their discretionary power* to handle all checks payable on presentation as not to deplete their revenues by the payment of their funds for collection services,

Or *it requires* the Federal Reserve banks to handle not only such checks as come into their hands in regular course of business, but to go out into the highways and seek out such checks, and offer to collect them free of charge to their holders throughout the system, regardless of the expense involved in presenting them through special messengers, and paid agencies, vastly in excess of exchange charges, in case the banks on which they are drawn refuse to remit at par.

The first alternative would result in the refusal of the Reserve banks to receive checks that they have the discretion to decline to handle, because the banks on which they are drawn are entirely outside the system and beyond the jurisdiction and operation of the attempted prohibition of exchange charges, or else handle these and all other checks,

whether on members or non-members, as collecting agents for the holders, and pay the customary exchange charge for account of their principals.

The second alternative has resulted in the Reserve banks, after full conference and in full co-operation, and with the hearty approval of the Reserve Board, actively seeking to handle all kinds of checks for collection through a par list falsely representing that such checks can and will be collected at par by the Reserve banks. In the process of such collection all the coercive devices set forth in the pleadings and proof have been resorted to, to compel these outside banks to render the service, involved in transporting funds or credits, without compensation. In the Oregon case the expense of this process amounted to $3.25 per $100 collected, or more than thirty times the customary rate of exchange (281 Fed., 222). The member banks have apparently acquiesced in not charging exchange against Federal Reserve banks.

Perhaps an apology is due the court for thus thrusting before it the history of these enactments in behalf of the country banks, since it has said in this case: "We do not need aid from the debates upon the statutes under which the Reserve banks exist to assume that the United States did not intend by that statute to sanction this sort of warfare upon legitimate creations of the States" (256 U. S., 350).

All that is required to end all this litigation now pending in four judicial districts is the final statement by this court that the strained, extravagant, illogical, and unconstitutional interpretation of section 13 of the Reserve Act by defendants is not justified; is in conflict with its terms and

with the obvious economical purpose of Congress to safeguard the revenues of the Government.

It is no reply to say that plaintiff banks have no standing in court to object to the wrongful exercise by Federal Reserve banks, *in the future*, of the power to handle outside checks because they have no interest in the wrongful expenditures involved. It is well settled that if plaintiff banks will be injured by such wrongful practices they will be protected by injunction (City of Madison *v.* Madison Gas Co., 129 Wis., 249; 108 N. W., 65; 116 Am. St. Rep., 944; Attorney General *v.* R. R.'s, 35 Wis., 425; Hogan *v.* Nashville Rwy., 174 S. W., 1121; City of Alpena *v.* Kelley, 56 N. W., 941; Hardie Tynes *v.* Cruse, 66 Sou., 660; Vegetahn *v.* Guntner, 167 Mass., 62).

Cases cited to the contrary relate to executed instruments, the enforcement of which is sought to be resisted on the ground of *ultra vires*. (See cases cited by adversary counsel, National Bank *v.* Matthews, 98 U. S., 621, and Blair *v.* Chicago, 201 U. S., 400.)

Opinions of the Attorney General.

The Federal Reserve Board, followed by the Reserve banks, insist that all right to charge for the service of transporting funds through bank remittances was destroyed by the prohibition of such charges against Federal Reserve banks. In support of this position, they rely upon the letter of the Attorney General to the Governor of the Federal Reserve Board, dated April 30, 1918, with respect to the official opinion of the latter addressed to the President March 21, 1918 (31 Op. A. G., 245). The conclusion of that

official opinion was that the prohibition of these charges against Federal Reserve banks amounted to a congressional prohibition of the Federal Reserve banks paying such charges; that therefore the Reserve banks could not clear or collect checks on banks that are outside of the system and have the right to demand payment for the service of transporting funds by remittance; that because the handling of such checks by the Reserve banks was optional, not mandatory, checks on such outside banks that chose to make exchange charges could not be cleared or collected through the Federal Reserve banks. It is insisted by defendants that the Attorney General's letter of April 30 annulled this opinion. (That letter, as it appears in the Seventh Annual Report of the Federal Reserve Board, is stipulated into this record (Tr., 336) and is reproduced in full in the appendix to this brief (p. 84) for convenience of reference.)

The confusion of thought with respect to this letter of the Attorney General is due to failure to keep in mind the kind of checks he was talking about and the kind of banks upon which they were drawn. He had officially ruled on March 21, 1918, that the Reserve banks could not handle at all checks on non-member and non-par-remitting banks if exchange charges were involved. (See 31 Op. A. G., 245.) That ruling was not dealt with in the letter of April 30, 1918. The later unofficial opinion was responsive to a specific question raised by the member banks, viz., could not *member banks* charge exchange, where the checks were being handled for collection only? The Attorney General stuck to his text, and dealt with member banks only with respect to exchange charges against Reserve banks. Note his own statement of the question propounded to him: "You ask to

be advised whether the board correctly interprets my opinion (of March 21, 1918) as implying that no such distinction (between checks owned and checks received for collection) can be recognized *and that no member bank* can under any circumstances make any charge against its Federal Reserve bank in connection with the collection or payment of checks," and his answer thereto: "I construe the first paragraph of section 13 as *prohibiting member banks* under any circumstances from making the charges therein referred to against Federal Reserve banks."

We shall presently argue that this conclusion of the Attorney General in his letter of April 30, 1918, is unsound, but, certainly there is no conflict between this letter and the official opinion it refers to. The former dealt with both member banks and non-member banks. The latter deals with member banks only. The right of non-member banks to charge exchange was upheld in the original opinion, and the making of such charges by non-member banks against Federal Reserve banks was definitely held to disqualify the latter from handling checks on such non-member banks. That conclusion as to the relations between non-member banks and Federal Reserve banks was not involved in the question propounded and answered in the letter of April 30, 1918.

In dealing with the right to charge exchange, reference can be had only to such charges by the bank upon which checks are drawn. No other bank is in position to make the charges because no other bank performs the service. The situation therefore was this:

The opinion of March 21, 1918 dealt with the right of *non-member banks* to charge exchange, and that right was upheld under the provisions of the Federal Reserve Act.

The subsequent unofficial opinion dealt with the right of *member banks* to charge exchange on checks handled by the Reserve bank for collection for account of other member banks, and that right was denied under the prohibition of the last clause of section 13.

The basic error of the Federal Reserve System springs out of the contention that as to Federal Reserve banks there is no distinction between exchange charges by non-member banks, and exchange charges by member banks. As to the non-member banks, the right to make such charges is definitely reserved without qualification by the plain language of the Federal Reserve Act. As to member banks the right to make such charges is sought to be restricted to banks other than Federal Reserve banks.

Just here is the heart of the whole controversy, and when thus dissected the soundness of appellants' interpretation seems obvious.

It is submitted that under section 13 as amended Federal Reserve banks are authorized (but not required) to handle checks on non-member banks for account of members only when such handling involves no cost or expense by way of collection and remittance charges; that non-member banks have the right to collect the usual rates of exchange and may insist upon such charges against any one requiring the service involved in transferring or transporting the funds represented by the proceeds of such checks after their payment, even against Federal Reserve banks unless voluntarily waived; that the scheme of the Federal Reserve bank in seeking out checks on non-member banks who decline to waive such legitimate charges for services rendered, and undertaking the collection thereof by presentation at the

counter, regardless of expense, is not only unauthorized by the Federal Reserve Act, but is in plain violation of its express provisions prohibiting Federal Reserve banks from paying even ten cents per hundred dollars where such a charge can be and is lawfully exacted by non-member banks; that the purpose of prohibiting exchange charges against Reserve banks, if constitutional, was to conserve the expenditures of Federal Reserve banks in connection with their functions as collection agencies of their members, and that Congress by attempting to prohibit exchange charges against Federal Reserve banks cannot be convicted of the ulterior and duplicitous purpose of enabling the Reserve banks, through the operation of this prohibition, to coerce non-member State banks into par remittance and thus deprive them of legitimate revenues that could not be constitutionally taken away from them by direct legislation.

TO WHAT EXTENT CAN THE PROHIBITION AGAINST EXCHANGE CHARGES BE CONSTITUTIONALLY ENFORCED?

With great respect for the able opinions of the learned Attorney General, we submit that the provisions of the Fifth Amendment to the Constitution of the United States require an interpretation of section thirteen that will restrict the prohibition of exchange charges contained in the last clause of the Hardwick amendment not only to member banks, but to checks drawn upon and remitted for by member banks themselves that are the absolute property of the Reserve banks, *i. e.*, when not only legal title by endorsement is vested in the Reserve banks for purposes of collec-

tion but the ultimate and exclusive beneficial interest in the proceeds of such checks has been vested in the Reserve banks so that if exchange is charged it can be paid only out of the revenues of the Reserve bank, and therefore out of the revenues of the Government itself. Even this restriction of the prohibition leaves the enactment of doubtful constitutionality, because the Government itself cannot expropriate private property or private property rights without due compensation. Since, however, all the banks whether members or not, have, with commendable patriotism and public spirit, always refrained from charging exchange against the Government the enforcement of this prohibition against exchange charges where ultimate payment thereof falls on the Government (directly or indirectly) will be acquiesced in in the future as in the past.

If this prohibition of exchange charges is not thus interpreted and applied it must fail altogether because its enforcement deprives private corporations of their property without due process of law, and takes private property for private use without compensation.

National banks are deprived of a valuable property right which they had been exercising from the beginning of their corporate existence. Their membership in the Federal Reserve System is compulsory and must continue so long as they exist. Hence they are confronted with the loss either of life or of property; yet both life and property are safeguarded in the same clause of the Constitution.

This court has held in all the public utility cases that this sort of legislation cannot be constitutionally enacted, even though the deprivation springs indirectly from the inability to earn a fair return on the investment under legislative

rates. In the case at bar, the proposition is to destroy *all* rates of compensation for a transportation service that is of as distinct and well-recognized value as the transportation of persons and property. If the attempted statutory rate of ten cents the hundred dollars would be declared unconstitutional if found to be confiscatory, what are we to say of an enactment that is so interpreted as to prohibit any charge whatsoever? What can be said except that unless, by interpretation, the application of the prohibition may be so restricted as to be upheld for limited purposes, only, the whole clause must be declared unconstitutional and void? But the Federal Reserve Board replies that under section 16 the Reserve banks are required to receive on deposit *at par* all checks drawn by depositors in member banks, and under section 13 are authorized (though not required) to receive on deposit all checks payable on presentation. They contend that receiving *at par* implies a prohibition against exchange charges equivalent to the express prohibition in section 13. In the first place it may be answered that an unconstitutional law cannot be made constitutional by repetition. In the next place the requirement to receive *at par* is conditioned upon so receiving such checks *on deposit*—not for collection. Even if received on deposit, and immediate credit subject to check is allowed, the expression *at par* does not imply a prohibition against the drawee bank's charging the customary rates of exchange for remitting the proceeds. The words *at par* in this context must mean that at the time of deposit full face credit must be given, subject, however, to a countercharge against the depositing bank if the drawee bank imposes an exchange charge for its remitting service. The amount of this exchange charge, and no more, would be

debited back as a service charge incurred by the Reserve bank in clearing and collecting these checks. (See quotation from section 16, *ante;* p. 18.) So that the words *at par* in Section 16 express but one purpose viz: No Federal Reserve bank shall *deduct* in advance exchange charges at the time a check is received and credited, but the same shall be received and credited at its face value, *i. e., at par.* This interpretation is understandable and not unconstitutional.

But, the condition of receipt at par is not met under the Federal Reserve Board's regulations, viz., such checks are not received on deposit subject to check. Beginning on page 87 of the Appendix will be found Regulation J, governing the check-clearing and collection system. A careful study of this regulation will throw much light on the question now under discussion. It will be found that only deferred credit is given for the face of such checks—a mere record entry. Actual credit to the minimum reserve account subject to the checks of the depositing bank is not authorized under this regulation *until the proceeds are actually collected.* Should checks be drawn in amounts to reduce the reserve below the required minimum, such reduction is treated as an overdraft and the depositing bank is penalized by a rate of interest 2 per cent in excess of the current discount rate. (See paragraphs 3 and 7 of Reg. J., App. 87-8.)

But the whole matter is finally and fully cleared up by paragraph 9 of Regulation J (App. 89), which provides:

> "In handling items for member and clearing member banks, *a Federal Reserve bank will act as agent only.* The Board will require that each member and clearing member bank authorize its Federal Reserve

bank to send checks for collection to banks on which checks are drawn, and, except for negligence, such Federal Reserve bank *will assume no liability.*"

Also see Defendant's Bulletin, Tr., 345.

This made the Reserve banks mere naked bailees of such checks, stripped of all responsibility except for negligence. It makes the Reserve banks mere conduits between the depositing bank and the paying bank, and since 1918 all service charges by the Reserve banks have been cancelled (because their net earnings became so enormous they began charging out all possible operating expense to keep down scandal, Tr., 315), so that now the Reserve banks are not even bailees for hire with limited liability. They are naked trustees of the custody of the checks until their proceeds are received, and then the proceeds are credited to the true owner's account. Can any informed man insist that if the drawee banks deducted the customary exchange charges from the face of these checks to compensate for the service of transporting their proceeds from their counters to the Federal Reserve banks, the diminution of the proceeds thus caused would be a charge against the Federal Reserve banks? Obviously it is a charge against the depositing bank, legitimately made for a legitimate service, and falls literally, no less than equitably, within the provisos to both sections 13 and 16, expressly preserving the right of all banks, whether members or non-members, as between themselves, to charge and receive reasonable compensation (which the act seeks to limit to 10 cents per $100) for collecting and remitting the proceeds of checks. Invoking the prohibition in the final clause of the Hardwick amendment to prevent such charges on checks

thus merely passing through Federal Reserve banks as naked collection agents, serves to demonstrate the disingenuousness of the attitude of the Federal Reserve Board, speaking through its former Governor, throughout this ill-advised controversy. If the principal is subject to a charge he certainly cannot escape it by handling the transaction through an agent.

But the Attorney General, in his letter of April 30, 1918, predicates his opinion on the assumption that the checks he was dealing with were received "on deposit" and such immediate credit given as that the relation of debtor and creditor between the depositor and the bank was immediately created, and the credit immediately became subject to check. That this was the premise of the Attorney General more clearly appears by reference to the case he cites (Burton v. U. S., 196 U. S., 283), in which an indictment against Senator Burton was *nolle prossed* because he received immediate credit in Washington for certain checks payable in St. Louis and therefore the venue in Missouri of the alleged crime of *receiving money* in St. Louis for professional services against the interest of the United States while he was a United States Senator failed. He received the money in Washington and not in St. Louis because the Washington bank gave him an immediate credit subject to check when the alleged illegal checks were deposited. But even on these facts Mr. Justice Harlan dissented because the ultimate liability of Senator Burton as endorser on these checks was not discharged until actual payment of the checks in St. Louis. With its usual thoroughness this court assembled in the Burton case the pertinent authorities on this question. From these authorities it will appear that the majority opinion was based on the

absence of any agreement between Senator Burton and his Washington bank that such checks were taken for collection only. Had any such agreement appeared, either express or implied, the judgment of the court would have been exactly the opposite, *i. e.,* that Senator Burton never received the money until it was actually paid to his agent in St. Louis.

In the case at bar, all checks are required to be received by the Federal Reserve banks *for collection only,* with no responsibility except for negligence, and their proceeds not subject to check until *actually received.* It follows that the premise on which the Attorney General proceeded to his conclusion that *member banks* cannot under any circumstances charge exchange against reserve banks is entirely wanting under the actual regulations of the Reserve Board. The last prop under the position of the defendants is thus removed. See their bulletin, Tr., 345.

It is confidently insisted that even member banks can charge lawful rates of exchange for remitting proceeds of commercial checks upon them where such checks are sent to them for remittance by the Federal Reserve banks, acting, as they must, as mere collecting agents for the banks so depositing such checks for collection. Distinction between member and non-member banks would thus become unimportant.

Any other interpretation of this law not only brings it in direct conflict with the Fifth and Fourteenth amendments to the Constitution, but sanctions conduct of the Federal Reserve banks in using their own statutory exemption from exchange charges for the benefit of one member to the injury of another that might be harshly criticized. It is of a

piece with misusing the franking privilege in the United States mails for private purposes, or extending the use of a railroad pass to one not entitled to it.

The conclusion of this phase of the question is that in order to save any part of the attempted exemption of Federal Reserve banks from exchange charges it must be restricted solely to checks of the Government received on deposit for account of the Government, and subject to immediate check by the Government. A perusal of the debates in Congress discloses that this was all that it was meant to accomplish, and that its enactment was attributable solely to the then state of war and accompanying activities in raising and transporting the prodigious sums involved in that gigantic enterprise.

See the debates: Cong. Rec., 65th Cong., pp. 763, 1984, 3526, 3527-8, 3761, 3763.

Universal par clearance is impossible of accomplishment through coercion without an invasion of plaintiff's constitutional rights. It certainly cannot be made universal without coercion. The question of the constitutionality of this clause in the Hardwick amendment is squarely before the court. If held to be unconstitutional, as we think it is, the case is ended.

SECOND.

ON THE FACTS.

ALL THE SUBSTANTIAL ALLEGATIONS OF THE BILL ARE PROVEN BY THE UNDISPUTED EVIDENCE.

(*Assignments of Error Nos.* 1, 2, 3, 14, 15, 16, 17, 20, 21, 22.)

(Tr., 480 *et seq.*)

The decree finds against plaintiffs on two propositions, viz:

(*a*) That intention to withhold checks from presentation for the purpose of accumulation was not proven.

(*b*) That intention to coerce or injure plaintiff banks was not shown.

(*a*)

The effort of plaintiffs was to anticipate injury and prevent it by the remedy of injunction. This is the primary function of this extraordinary writ. Intention to accumulate checks aggregating large amounts (not the actual accumulation thereof) was but one of the charges of the bill. The method of accumulation intended is not alleged. Accumulation in aggregate amounts and collection in cash only were the deadly weapons in the warfare. Whether such accumulation resulted from withholding after receipt of the checks, or monopolizing the sources from which the checks came, and presenting them as fast as received, the aggregate amounts of cash demanded would be the same for any given period of time. The operation of the par list is shown to

result in consolidating in the hands of the Federal Reserve banks more than 90 per cent of all floating checks drawn on the bank whose name is listed thereon. Such a method of accumulation is within the allegations of the bill, and the intention to use it is officially declared by the executive officer of the defendant Reserve bank. It follows that the failure to show actual withholding presentation does not disprove intention to withhold, and does not warrant the refusal to enjoin the other methods of accumulation and the other "embarrassing, annoying, and expensive methods of collection" in contemplation of defendants when Exhibit B was written and circulated.

One of the other coercive methods referred to in paragraph 51 of the bill developed when the evidence came in, viz., checks on a non-assenting bank were sent out to its competitor in the same town to be collected at drawee's counter and remitted at par. The competitor bank had the inducement held out to it that under this arrangement it could obtain underhand information with respect to its neighbor's depositors and derive benefit from this inside information. It is creditable to the banks thus sought to be seduced into unworthy competitive methods that few, if any, of them yielded. Such an insidious attack on a non-assenting bank was not alleged specifically in the bill because plaintiffs at the time the bill was drafted had too high an opinion of defendants to have charged such a course if they had suspected it. Not until its existence appeared over the signature of Deputy Governor Adelson could plaintiffs have believed such a method was possible. (See App., pp. 31, 35, 36, 37, 38.)

But appellants insist that not only did intention to accumulate exist, but was proven to have been accomplished by

withholding presentation in at least one instance (App., 48). This fact makes applicable the principle of the case of American Steel Foundries *v.* Tri-City Central Trades Council et al., Supreme Court, 257 U. S., — (January 3, 1921), which may be paraphrased thus:

When one or more controversies or disturbances ensued, they characterized the whole campaign, which became effective because of its intimidating character, in spite of the admonitions given by the superior officers as to lawful methods to be pursued, however sincere.

The law does not look with favor on an enforced consideration of the merits of the issue between business corporations one group of which wishes to do business with another on terms not satisfactory to the latter, under conditions which subject the latter to severe tests of nerve and courage with respect to the effect on their business.

The element of intimidation involved in concentration of checks for payment in currency, and the actual injury to the business of the drawee bank, support the equitable jurisdiction and demand the injunctive relief sought.

Intention to arbitrarily place non-par banks on the par list is repeatedly stated in writing. Without this procedure the defendant bank would not receive checks on non-par banks at all. The result of the procedure was inevitable accumulation in amount of practically all checks on such non-par banks.

The plan was most effective. *Before* the name of a non-member bank appeared on this list none of its floating checks came back through the Reserve banks. *After* its name was thus circulated practically all (more than 90 per cent) (Tr., 47) of such checks converged in the Reserve bank near-

est the location of the drawee bank. The ingenuity and success of this method for "seeking out," collecting together, accumulating in amount, and assembling in a body, for presentation, all the floating checks on a non-assenting, non-par remitting, nonmember bank, challenges admiration. When thus enticed into defendant's hands the purpose to adopt methods of collecting them that would prove embarrassing, annoying and expensive to the banks on which they were drawn was boldly announced by defendants' chief executive officer pursuant to the unanimous action of its board of directors in carrying out the announced policy of the Federal Reserve Board. The right to do so was asserted unequivocally and insisted upon at the bar of the Supreme Court of the United States. Note the reasons advanced by defendant's counsel why the judgment dismissing the bill should have been affirmed by this court:

> "First, there were no proper allegations in the bill of a conspiracy or of unfair competition. Plaintiffs, on the contrary, alleged, in legal effect, that the defendants were preparing to do a legal thing in a legal way."
>
> "Second, the 'threatened acts' alleged in plaintiffs' bill to be in contemplation of the defendants were within the spirit, letter and intent of the Federal Reserve Act." (Appellees Brief in No. 679, page 59.)

Again, on page 60, learned counsel say:

> "There is nothing illegal, unusual, or untoward involved in the collection of a check in currency at the counter of the bank on which such check is drawn" (*Ibid.*).

Again they interpret for us the purpose of the official letters, Exhibits A and B to the original bill, as follows:

> "The clear import of exhibits 'A' and 'B' is to give every non-member bank the option of paying checks, in the hands of the Federal Reserve bank for collection, either in par exchange or currency. If the plaintiff banks voluntarily refuse to pay checks in par exchange, they ought not, we submit, in equity and good conscience, to be allowed to undertake to restrain the collection in the only other known medium of payment lawful for acceptance by the Reserve bank, viz., *in currency* without deduction for remittance charges made by the payee bank" (p. 62).

Defendants have been routed from these positions by the decision of this court in this case (256 U. S., 350), followed by the Brookings State Bank Case, 281 Federal, 222, and the Kentucky Case decided by Cochran, D. J. Nov. 14, 1922, 286 Fed., 566, 610.

It is earnestly insisted that the finding against the existence of wilful and malicious withholding of presentation of checks for the purpose of accumulating a large amount to be demanded in cash does not justify the denial of injunction against arbitrary publication of a non-par bank on the par list and against the coercive use of the checks thus solicited by irregular methods of collection. Such an application of the principles of the former decision of this court contracts those principles to the vanishing point. That decision condemned interference with the established business of plaintiffs as now conducted by any coercive method whatsoever.

The allegations of the bill do not charge any particular

method of accumulation. Any process of accumulation that aggregates a large amount falls within the charge in the bill and the mischief that is alleged to flow from presentation at the counter for payment. The trial court restricted the allegation to withholding checks *after their receipt* until they reached a large amount in the hands of defendant before presentation; that if presented through a daily process and two or more of them were thus handled, the evidence failed to support the charge, and no wrong was inflicted on plaintiffs.

This misconceives the gravamen of the bill and the undisputed evidence that through the operation of the par list, practically all foreign checks on a bank named therein converged in defendant's hands for collection. The Deputy Governor's letters repeatedly show that until a bank's name got on the par list, no items on it reached defendant; but afterwards they came in regular course. See this expression recurring in the correspondence:

> "We will accordingly include the name of your good bank in the next issue of our par list and *as soon as the items begin* coming to us, they will be forwarded," etc. (Trans., 84, 91, 93, 94, 99, 106, 107; App., 37, 39).

Then note the final threat and last act preparatory to coercive collection at the counter:

> "As soon as we are able to make necessary arrangements in your city we will again place the name of your bank on our par list, and begin collecting the items by presenting them for payment in cash, unless you will advise us that you will remit at par" (Tr., 116; App., 39).

It is the concentration of practically all these checks in one channel and demanding payment in cash that hurts, and that injury is the essence of the charge in the bill. All checks against a solvent bank must be paid and their payment is provided for by lawful reserves, a fraction of which alone is kept in cash and the balance in reserve deposits at financial centers. Mere delay in presenting a check helps a bank, in so far as the use of its proceeds in the interval is a help. Segregating and accumulating outstanding checks in the hands of a single holder who demands cash destroys the law of averages which this court holds in this case that all banks have a right to rely upon. Such segregation and accumulation is accomplished through the operation of the par list with a celerity and precision that surpasses any other known device. The injunction prayed for, if granted, would effectually stop the process because it would forbid handling checks on plaintiffs and the unauthorized publication of plaintiffs in the par list and thereby leave their checks to follow customary banking channels.

THERE IS NO BASIS FOR CONTENDING THAT THE PURPOSE OF THE PLAINTIFFS' BILL IS TO COMPEL THE RESERVE BANK TO AVAIL ITSELF OF THE SERVICES AND FACILITIES OF THE PLAINTIFF BANKS. THE EXACT REVERSE IS TRUE.

The purpose of the plaintiffs' bill is, to use the language of the Supreme Court, to preserve for themselves the right to continue "their business as now conducted;" and every remedy sought at the hands of the court is aimed at that result.

As now conducted the plaintiffs' business does not include nor contemplate any business relations with the reserve bank

whatever and that is the status which the plaintiff banks most earnestly desire to maintain. Whatever ground for contending that the country banks desire to compel the Reserve bank to avail itself of their facilities may have existed in previous argument and decision is now completely removed by the evidence before the court. The plaintiffs seek an injunction prohibiting the Reserve bank from arbitrary publication of the plaintiffs' names or addresses on the "par list," and from handling checks on non-par banks.

It has been proven that before the publication of a bank on that list the Reserve bank received only an occasional governmental check drawn upon such bank; but that after such publication the Reserve bank immediately began to receive a large proportion, 90 per cent or more, of all checks drawn upon it. The effect of the plaintiffs' prayer, if granted, would be to keep out of the hands of the Reserve bank all checks upon the plaintiffs on which it could be subjected to any charge for collection and remittance. The contention, then, that the plaintiffs seek to compel the Reserve bank to use the plaintiffs' services for the plaintiffs' profit falls to the ground.

Injury from Monopoly.

Monopolizing the sources from which floating checks come necessarily results in accumulation of these checks, and the whole scheme of the Federal Reserve System is successful in proportion to the extent of this monopoly. The damage from accumulation springs from the result and not from the method of its accomplishment. Withdrawal from the natural channels and artificial concentration in one hand is a necessary consequence of the unauthorized publication of

an outside bank on the Federal Reserve System's par list. It is not true that it is no more burden to the bank to pay all checks to a single holder than to pay the same amount in the aggregate to many holders. Diversity in holding affords opportunity of utilizing in such payment many different kinds of exchange. One holder may wish exchange on New York, another exchange on Atlanta, another exchange on Richmond, still others may have accounts with the drawee banks to which said checks may be credited. Keeping of these reserve accounts in these different locations is a distinct benefit to the outside banks and is cited by the Governor of the Federal Reserve Board as one of the fundamental reasons that keep so many State banks out of the system. Concentration of all these reserves in the Federal Reserve bank without liability for interest thereon is the one desideratum on the part of the system and the one great drawback to membership in the system. This thought exposes the real underlying policy of the effort to establish universal par clearance. If it is established, then there goes with the monopoly of collecting checks the monopoly of the enormous aggregate of deposits which banks must carry as a part of their reserve. Since Congress leaves the question of membership in the system in the uncontrolled discretion of the outside banks, an effort by coercive methods to compel universal par clearance is not only not authorized but, by necessary implication, forbidden by the spirit of the Federal Reserve Act and by the letter of the former decision of this honorable court.

(*b*)

DENIAL OF COERCIVE INTENTION IN THE EMPLOYMENT OF EMBARRASSING, ANNOYING, AND EXPENSIVE METHODS OF COLLECTION IS FUTILE.

From the Governor of the Federal Reserve Board down to the Deputy Governor of the defendant Reserve bank intention to coerce appears in all their official writings on the subject. The fact and effect of the coercion is recognized and attributed to the provisions of the Federal Reserve Act. Governor Harding described the process in an official letter to a congressman and said: "If this is coercion * * * it is unavoidable" (App., 27). Governor Wellborn said: "The whole question was fought out on the floor of Congress, and the country bankers lost—now they must abide the result" (App., 35).

Government Agent McCord said (according to the testimony of Mr. Tumlin) that the defendants were going to put on the par clearance campaign and that plaintiffs would be forced to submit because defendants were going to collect the checks on plaintiffs at the counter and he knew that that would ruin any bank (App., 50).

Deputy Governor Adelson received a letter from the Lamar County Bank saying:

> "I have carefully noted the threat involved which is now generally recognized as being 'the big stick' which the powers that be have decided to use to compel the clearing of checks at par" (App., 40).

to which he replied:

> "As officers of the Federal Reserve bank, we must carry out the provisions of the Federal Reserve Act, and as the par collection of checks is one of the provisions of that Act, we will be compelled to adopt means of collection that will no doubt prove expensive and annoying to all concerned in connection with those banks that do not voluntarily agree to remit at par" (App., 34).

Each of these statements imply coercive intent, aimed specifically at banks that refuse to remit at par, and they are but typical of all the written evidence in the case. They cannot be overborne by a disclaimer of the intention, made subsequently, with the obvious purpose of avoiding the effect of the decision of the Supreme Court of the United States.

"Presentation at the counter"—the outlawed method—is the big stick always used to force some unfortunate bank to renounce its rights and to submit to the orders of the Reserve banks to do something which they have no lawful right to require. It has been used to coerce banks to remit at par. It has been used to compel banks to move their reserve accounts out of cities through which the streams of their commerce naturally flow and into Reserve bank cities away from and outside of the natural channels of the communities' trade. It has been used to drive State banks' reserves out of commercial banks and into Reserve banks, and had the Supreme Court not put the stamp of illegality on it—it would have continued to be available for any ulterior purpose to which it might be put.

The reputation of a solvent bank is no less sensitive to attack than the character of a virtuous woman. A threat of

embarrassment to a bank is therefore the most potent form of coercion that could be employed. It could withstand mere annoyance and a reasonable amount of expense, but "embarrassment" is intolerable.

Analysis of the Issues.

This case is clearly stated by the Federal Reserve Board, speaking through its Governor, Mr. W. P. G. Harding, for all the Federal Reserve banks in a communication to a Senator of the United States, dated April 1, 1920, and found in the record at page 122 (App., 22). The issue is formulated by him as follows:

First. That under the provisions of sections 13 and 16 of the Federal Reserve Act, the Board is charged with the duty and responsibility of inaugurating a complete check-clearing system throughout the United States.

Second. The practice of making exchange charges by the banks was so deeply rooted that most of the banks very naturally looked upon the charge as a normal and legitimate source of revenue and were reluctant to give it up.

Third. The law does not provide any penalty upon non-member banks for refusing to remit at par, and therefore it was clearly impracticable to establish a complete clearing system over night.

Fourth. Thereupon it was determined to begin a progressive campaign of education along the line of least resistance, beginning in New England, where only a few banks in Vermont objected; thence in the New York District in a part of

which the opposition was more determined and it was necessary for a while to make collections on some of the banks through the express companies; thence in the districts of Philadelphia, Chicago, Cleveland, Kansas City, and Dallas, Texas, in the order named, and then in certain other States in other districts. "It was deemed wise," says the Governor, "*not to force matters* by making collections through the express companies or other agencies *until* the non-member banks had had the whole situation fully explained to them and when a majority of the banks in a Federal district had so agreed, arrangements were made to collect on non-assenting banks by means of agencies, *announcement then being made* that the system was operative throughout the entire district or in particular States in a district."

Fifth. A total of some three thousand banks, principally in the agricultural districts of the West and South, made a determined resistance (note the case at bar and the parallel cases in Oregon (281 Fed., 222), Kentucky (286 Fed., 566, 610), and North Carolina, No. 823, present term) by reason of which the Governor advises the Senator that "unless Congress should be willing to enact some law making it decidedly to the interest of banks to remit at par, just as in 1865, by the exercise of its taxing power, Congress made it to the interest of State banks to retire their State bank notes, it is difficult to see how it is possible to accelerate the present rate of progress in the development of a complete nation wide check-clearing system through the Federal Reserve Board."

Sixth. The Senator was further informed that the case at bar was pending and would possibly reach the Supreme Court of the United States, and therefore probably several

months would elapse before a complete clearing system *could be established* in the Atlanta District.

The analysis of the situation thus made by the Governor of the Federal Reserve Board was circularized to all the governors of the twelve Reserve banks on April 5, 1920, and on April 12, 1920, a copy of it was enclosed to a Congressman (App., 27) who was further informed that "All non-member banks have been advised that if they do not care to remit collection will be made through some outside agency by having the checks presented at the bank counters for payment. *If this is coercion, as contended by your constituent, it is unavoidable.*"

These statements serve as an accurate epitome of the allegations of the bill in this case. At that time, the officers and directors of the defendant Reserve bank were in complete understanding and accord with the Reserve Board. See Exhibits A and B to original bill (Tr., 74, 77; App., 18, 20).

Let us further condense the issue which was inexorably submitted to the plaintiffs by the defendants (and which plaintiffs met by filing this bill).

The Federal Reserve banks, including defendant, assumed a legal duty to exercise a discretionary power for the establishment of universal par remittance. Resistance was encountered. Persuasion failed. Universality was impossible unless submission was enforced. Possession of checks of plaintiffs was a condition precedent to coming into forcible contact with them. Force consisted in demanding payment of such checks at their counters outside of regular banking channels. This force amounted to warfare voluntarily sought and waged by defendant against plaintiffs. Congress

not having seen fit to supply penalties with which to subjugate plaintiffs, the collecting together through the par list of checks on plaintiffs aggregating amounts in excess of lawful cash reserve requirements and presentation at counter for the avowed purpose of coercing submission to the loss of exchange revenues as the lesser evil was thought to be a permissible exercise of the ordinary right to cash a check. That course has been specifically condemned by this court (256 U. S., 350).

The purpose to establish universal par clearance is still asserted in the record, but a change of purpose is now put forward, viz., that if in the judgment of defendant a drawee bank tenders solvent and acceptable drafts in payment of checks presented at counter they will be accepted to prevent embarrassment on account of shortage of cash. Such a course was never thought of until the decision of the Supreme Court on May 16, 1921.

The principle of the decision of this court on former appeal cannot be escaped by the expedient resorted to in the amended answer of accepting exchange drafts in lieu of cash at the counter. Such an expensive and irregular method of collecting checks voluntarily enticed into the hands of the Federal Reserve banks imports a purpose outside of and beyond the mere collection itself. Otherwise the onerous task would not be undertaken under the discretionary powers of the banks conferred by the act. Governor Harding testifies what that purpose is (Tr., 300), viz., that such a course would ultimately result in the non-member bank agreeing to remit at par, because it would be deprived of its revenues from exchange in either case.

Unless this court meant to limit its decision to a particular means for the accomplishment of an unjustifiable end, the amended course of defendants is as obnoxious to the decision as the original course was. Appellants submit that the "warfare" itself was condemned, not merely a particular weapon used in a particular way. It is not a case of a just war being waged with weapons condemned by the rules of civilized warfare. It is a case of unjustifiable warfare on these comparatively feeble competitors regardless of the caliber of the artillery.

The only essential facts required to make the principles of this decision applicable are:

1. The existence of a purpose outside of and beyond the mere collection of the face of the check.

2. The collection together of checks on defendants for presentation in a body as a means of carrying out the ulterior purpose.

3. Injury to the defendant banks by the accomplishment of that purpose. That these three elements exist in this record appears beyond question.

The purpose is to establish universal par clearance—reiterated and emphasized in all the official writings of the Federal Reserve Board and the Federal Reserve banks.

The convergence and concentration of checks for presentation is confessedly accomplished through the operation of the par list.

The injury to defendants is the breaking down of their legitimate business based on lawful charges for the service of transporting funds from place to place—a business sanc-

tioned by custom as old as the banking business and expressly recognized and protected by the terms of the Federal Reserve Act itself.

The existence of such facts at the time the bill was filed is admitted and defendants seek refuge in a complete change of front by disclaiming any intention hereafter to do the things they *said more than a thousand times* they were going to do in the intensive campaign for putting par clearance into effect in the Sixth Federal Reserve District, and thereby catch up with the other districts, all of which had progressed much faster and further toward the ultimate goal of *universal par clearance*. The sole issue is as to the legality and propriety of this warfare.

Analysis of the Proof.

In July, 1919, defendant Reserve bank had circularized banks in its district by form letter (Tr., 69) showing 11,000 non-member banks remitting at par. By December this number increased to 16,196 above stated, or more than five thousand in less than six months. This was stated to be the result of "the twelve Federal Reserve banks uniting in their efforts to bring about the establishment of a national par list," as stated in said circular. Plaintiffs had a right to anticipate that, thus uniting, and thus succeeding, the same methods would be adopted in the Sixth District that were so successful elsewhere, and that these were the methods threatened. Upon this information and belief the allegations of paragraphs 46 to 51 were based (App., 6-10). What clearer proof of the existence at that time of such a purpose is needed? A check cannot be collected except by presentation.

If not presented through regular channels, presentation through special agencies is the only possible alternative, and all these possible methods are set forth in separate paragraphs. In answering these paragraphs of record, "defendants admit that in order to collect checks on non-member banks which had declined to remit at par for checks drawn upon such banks, and in the hands of defendant Federal Reserve bank for collection, said defendant bank had intended in some instances to employ agents in certain towns where such banks were respectively located, and had intended, from day to day, in regular course of business, to mail checks so drawn on said non-member banks to such agents, with instructions to present the same at the counters of the respective drawee banks for payment, and that the defendant may in the future appoint agents for the same purpose and mail checks to such agents with similar instructions." The same admission is made as to express companies (App., 8).

So we have the basic threat of embarrassing, annoying and expensive methods of collection. We have the specification of these alternative and interchangeable methods charged in the bill, but the gravamen is not the particular method employed. The fundamental wrong complained of is the oppression involved in any irregular method of collection not in accordance with banking practices, designed to force submission to the announced plans of the Federal Reserve System to "establish" universal free service in transporting funds through banking channels. The bill expressly charges "that any method which disrupts the orderly course of business involved in the collection of checks through the mails would necessarily be ruinous to the business of petitioners and other banks in like condition if persisted in, and would

result in either the submission of the petitioners or the abandonment of their business altogether under their State charters" (par. 51 of the bill; App., 10). "That the adoption of any of the methods hereinbefore described, *or any like methods,* for the purpose of coercing petitioners to relinquish the revenue accruing to them by exchange on remittances, would operate to deprive" them of their property contrary to the Constitution (par. 52 of original bill; App., 10).

But we have defendant's admission of intention to employ the methods specified, qualified, only, by a denial of intention to accumulate by withholding presentation and on this denial alone the decree is based. There is also a denial in the answer of "any purpose or intent other than to collect the said checks." The import of this denial must have escaped the honorable gentlemen who verified the answer. How can this be true in the light of the expressed purpose set forth in the following resolution of defendant's directors unanimously adopted on December 11, 1919?

> "WHEREAS, Under the terms of section 13 and section 16 of the Federal Reserve Act, Federal Reserve banks are required to receive on deposit checks or drafts payable upon presentation; and
>
> "WHEREAS, The other Federal Reserve banks have made rapid strides in putting their respective districts upon a par basis; and
>
> "WHEREAS, This bank has not kept pace with the rapid strides of other Federal Reserve banks in putting par clearance into effect; and
>
> "WHEREAS, At recent conferences of Federal Reserve agents and Governors of the Federal Reserve banks, the sentiment was expressed that the entire

country should be put on a par-clearance basis in accordance with the Federal Reserve Act;

"*Be it resolved*, That the Board of Directors of the Federal Reserve Bank of Atlanta does hereby instruct the officers of the bank to adopt such plans and incur any necessary expense in order to effectively arrange for the par clearance of checks and drafts drawn upon present non-par remitting banks payable upon presentation, received upon deposit by the Federal Reserve Bank of Atlanta."

(Tr., 62.)

These resolutions have never been rescinded and cannot be "talked" away. They form the center of the picture toward which all lines of perspective converge.

If the mere collection of checks was the sole purpose, what is meant by the recitals that other Federal Reserve banks have made rapid strides in putting their respective districts upon a par basis? That defendant bank had not kept pace with these rapid strides; that a recent convocation of executives of the Federal Reserve banks (plural) had expressed the sentiment that the entire country should be put on a par basis; that therefore action was demanded, and that action was *to adopt plans and incur any necessary expense* in order to effectively arrange—for what?

To merely collect such checks as came into defendant's hands without expense to the member banks? Not at all. The officers were instructed *to effectively arrange for the par clearance of checks drawn upon* NON-PAR REMITTING BANKS.

As these plans developed, the defendant did not confine itself to checks that merely drifted into its hands for collection, because none such came. In the language of U. S.

District Judge Cochran, in the Kentucky case the defendant adopted the "unusual and heretofore unheard of procedure of *seeking out* plaintiff's checks for collection and presenting them in a body for payment over the counter" (286 Fed., 566, 610). Defendant openly threatened before this bill was filed to do precisely that, as to the checks of a non-par bank in the Sixth District. See letter from the Deputy Governor to the Farmers Bank of Iron City, Tenn., dated January 10, 1920, where the following language is found:

> "*We trust you will give the matter further consideration as we would dislike very much to cause you the annoyance that would be incurred should we find it necessary to arbitrarily place your name on our par list, and arrange to present your items for payment in cash*" (App., 34, 36).

See also a like letter to the Holmes County Bank of Bonifay, Fla., dated February 16, 1920. (The restraining order was issued January 15, 1920, but the original bill was limited to banks in Georgia and therefore the campaign was continued against this and other banks in other States until by amendment the bill was extended for their protection.) This letter disclosed that this bank's name had been on the par list apparently by consent that was withdrawn on February 5, 1920. Note that the name of this bank was removed from the par list by defendant, but only because—

> "Our arrangement for collecting checks drawn on you, *by presenting them for payment in cash* * * * have not been perfected. On account of the large number of non-par remitting banks in the Sixth Federal Reserve District, it is not possible for us to *arbitrarily commence collection at par on all banks at*

> *one time,* and therefore we have to go about it by setting off certain areas to be taken up at a time. As soon as we are able to make the necessary arrangements in your city, *we will again place the name of your bank on our par list* and begin collecting the items by presenting them *for payment in cash,* unless you will advise us that you will remit at par (App., 38, 39).

Since the decision of the Supreme Court on the former appeal in this case, defendant's answer avers that their only purpose in adopting these irregular methods of collection is to get the proceeds of checks in their hands. Prior thereto with the avowed object of establishing universal par clearance, defendant sought out checks on non-par banks (by arbitrarily placing their names on the par list) that they admit would never reach them otherwise. Thus defendant itself creates the condition that it pleads in justification of its coercive methods. It hungers for an excuse to assault the outside banks, and finding none except their natural aversion to being assaulted, it creates the *casus belli* it pleads in explanation of its assault. One is reminded of the fable of the wolf and the lamb drinking from the brook at the same time and the fatal result to the lamb.

Motive, intention, or purpose, exists in the mind, and proof thereof is generally difficult and unsatisfactory. But on this record it is established that at the time this bill was filed the defendant Reserve bank had deliberately resolved by formal corporate action to co-operate with the other Reserve banks to establish universal par-clearance in the United States. That it purposed to carry its district by persuasion if possible, if not by force. Persuasion had confessedly failed.

Coercion was to assume the form of continuous demands for currency beyond the ability of any bank to meet. In order to authorize such demands the plan was to send out a nation-wide invitation to all banks into which the checks of recalcitrant banks came, to forward such checks to defendant and defendant would undertake to collect their proceeds and transmit them to the hands of the banks entitled thereto without charge. This invitation assumed the form of the "par list." This par list was printed in the Government Printing Office and distributed (presumably under mail frank) from Washington under the supervision of the Federal Reserve Board with the *imprimatur* of the U. S. Government behind it. Its contents were the consolidated information supplied to the central office by the twelve Reserve banks and their branches. It went into the counting-houses of some 25,000 banks. It performed the same service to each of the Reserve banks that an army of solicitors seeking the privilege of giving away this free service could have performed. The par list is obviously impossible without full co-operation and concert of action by all the twelve Federal Reserve banks.

Thus, defendant claims that in good faith it considers itself bound under the law to undertake these collections, and under a duty to invite them, in carrying out a concerted plan to put into effect universal par clearance throughout the United States. That this plan has the approval of the Federal Reserve Board, and that regardless of expense, and injury to the business of appellants which it concedes, it must employ these methods until the non-par banks yield to the pressure and voluntarily agree to furnish the service without charge, as the lesser of two evils. The learned trial judge

concurred in this view and his judgment has been affirmed by the Fifth Circuit Court of Appeals (284 Fed. 434).

Appellants submit this interpretation ignores the purpose of this court's decision. That decision rested upon the principle that in organized society very few rights are absolute. The application of that principle to this case is illustrated by the twentieth assignment of error then before the court, viz.:

> "In holding and deciding that, because, under the interpretation the lower court placed upon the Federal Reserve Act, the purpose of Congress was to establish a system of universal par-clearance, any *method of collection* could be rightfully employed by Federal Reserve banks to further this purpose regardless of its effect upon the business and private property rights of State banks wholly without the jurisdiction of the Federal Reserve Act and of the Federal Reserve banks created thereby."

That assignment of error was necessarily sustained by this court when it said "it is not enough to refer to the general right of a holder of checks to present them but it is necessary to consider whether the collection of checks and presenting them in a body for the purpose of breaking down the petitioner's business as now conducted is justified by the ulterior purpose in view." Such a course is compared to a run on the banks, and condemned, although its effect may stop short of absolute ruin.

The coercive effect of presenting these checks for payment in cash was conceded; the purpose to so handle them is reiterated more than a thousand times over the official signature of defendant's officers pursuant to the action of its

...doctors. The right to so handle them was asserted boldly ...and continuously up to the conclusion of the argument in ...the court on the last appeal. At least two instances of the ...exercise of this purpose are proven (sending Tutwiler to ...Selma, Ala., Tr., 301, and accumulation of checks on State ...Bank of Quitman, Fla., Tr., 307), and threats to place on the ...par list and collect in cash were officially sent to more than ...a thousand non-par banks in the district. Is it not trifling ...with testimony to say that all this written and undisputed ...evidence failed to support the charge of intention to coerce? ...Indeed actual coercion is conceded in the decree and in the ...opinion of the Fifth Circuit Court of Appeals affirming that ...decree but is condoned because the learned judges could ...not bring themselves to believe that defendant was guilty ...of an abuse of the abstract right to present checks for pay-ment in cash in the process of making collections between banks. Note Judge Walker's language: "If the holder of the checks is guilty of no wrong the fact that the payee is inconvenienced by having to pay in cash would not give the latter a valid ground of complaint." The court here resumes the exact position it occupied before the Supreme Court reversed it on the former appeal. Bear in mind, none of these checks on plaintiffs ever reach defendant till defendant has solicited them through the par list; that this solicitation follows the persistent refusal of plaintiffs to remit at par; repeated warning of this step is officially given and opportunity afforded the dissenter to repent. Finally the issue is joined; the par list goes out; the checks come in; the cash is demanded; the embarrassment, expense, annoyance, inconvenience if you please, follows, and yet no wrong has been committed. The object sought is, confessedly, par remit-

tance—universal, all-inclusive par remittance. Plaintiffs obstruct the process; defendant pleads for the removal of obstruction without effect; the weapons of coercion are solicited and received in accumulated numbers and amount and effectively used. All this is conceded. And still no wrong is found because under the decree the defendant is authorized to collect all checks received by it. Mr. Justice Holmes said in this case

> "most rights are qualified. * * * When we think of the ordinary case the right of the holder (of a check to demand cash) is so unimpeded that it seems to us absolute. But looked at from another side it cannot be so * * * Banks, as we know them, could not exist if they could not rely upon averages and lend a large part of the money that they receive from their depositors on the assumption that not more that a certain fraction of it would be demanded on any one day. If without a word of falsehood * * * a man by persuasion should organize and carry into effect a run upon a bank and ruin it, we cannot doubt that an action would lie. A similar result, even if less complete in its effect, is to be expected from the course that the defendants are alleged to intend, and to determine whether they are authorized to follow that course, it is not enough to refer to the general right of a holder of checks to present them but it is necessary to consider whether the collection of checks and presenting them in a body for the purpose of breaking down the petitioner's business as now conducted is justified by the ulterior purpose in view. If this were a case of competition in private business it would be hard to admit the justification of self interest considering the now current opinion as to public policy expressed

> in statutes and decisions. But this is not private business. The policy of the Federal Reserve banks is governed by the policy of the United States with regard to them and to these relatively feeble competitors. We do not need aid from the debates upon the statutes under which the Reserve banks exist to assume that the United States did not intend by that statute to sanction this sort of warfare upon legitimate creations of the States" (256 U. S., 358).

Confronted by that decision and after the proof on the trial had developed down to the last witness for the defense, overwhelmingly establishing, by the sworn admissions of the defendants themselves, the essential facts that demand the injunction prayed for, defendants seek to recant, say they were merely "bluffing" *despite the actual execution of the threats* until stopped by the restraining order, and formally put in their answer a so-called disclaimer of intention *in the future* of doing anything that could possibly prove embarrassing, annoying, or expensive to plaintiffs.

It cannot escape the attention of the court that a disclaimer operating *in futuro* presupposes the prior existence of the thing disclaimed. If one has not sinned one cannot repent. Repentance imports guilt. A promise "not to do it again" is meaningless if it was not done before. The disclaimer itself demonstrates the previous mental attitude.

No matter what intentions the defendants may have had at the time the disclaimer was filed, it is inconceivable that under the evidence their intentions at the time this bill was filed were to limit the methods of collection to that set out in their amended answer on January 12, 1922. The defendants now say they had no intention of ever using

methods that would prove embarrassing, annoying and expensive to the banks. Mr. McCord says that individually in his interrogatories. What, then, did he have in mind when he agreed with Mr. Tumlin that their methods would break the banks, that the banks could not stand them? Did not Mr. Adelson mean what he said in his various letters stating that messengers would be sent to the counters of the banks with demand for payment in cash or in cash only?

It is understandable how one man in one expression concerning his plans and intentions would let drop a phrase that he did not mean. It is incredible that a large board of directors and a full staff of executive officers and learned counsel, charged with the great responsibility of managing a tremendous banking institution, should send out, over their official signatures, definite and unequivocal statements to more than a thousand banks, knowing what the effect of those statements would be if carried out and not mean what they said. But that is not all. For eighteen months after such statements were made and spread broadcast among the banks in the Sixth District the intention to do the things threatened was reiterated through all grades of the Federal courts, concluding in the Supreme Court of the United States, with learned emphasis, in an elaborate brief, that the defendants had a perfect right not only to threaten, *but to do*, the things complained of.

Note the language:

> "At the outset of the argument on this phase of the case we lay it down as the first proposition relied on, *that the threatened acts charged are entirely valid and lawful*, considered in and of themselves."
>
> Appellee's Brief in Supreme Court, p. 52.

Governor Wellborn says he signed the circular letter containing these threats without specially noticing them. He admits that after Deputy Governor Adelson had prepared the letter for signature it was submitted to and approved by the official staff and was withheld a day or so, until each member of the executive committee could examine it. It was finally approved by all of them, signed by the Governor, manifolded more than a thousand times, and distributed under registered cover to more than a thousand non-member banks in the district. But it did not stop there. Replies came in resenting the coercion implied in the threat. Deputy Governor Adelson noted it and replied to it, and regretted the necessity for it, *but repeated it again and again.* The Deputy Governor was appointed to take charge of the matter; was especially charged with the responsibility of executing the order of the directors to adopt plans and incur any necessary expense *in order to effectively arrange for the par clearance of checks* drawn on *non-remitting banks.* Governor Wellborn testified on the trial in January, 1922, that "we were prepared to go ahead and do it"—and he (Wellborn) backed up anything Mr. Adelson did.

Defendants may declare now that their intentions were not such as were disclosed in their letters, in their conversations and in their actions, but it is submitted that the court must concede the right of the plaintiffs to take defendants' words, their writings and their deeds, spoken, written, and performed *dum fervet opus,* as demonstrating their true intentions at *that* time. The declared intentions of the defendants at *this* time cannot be used to prevent the grant of a proper remedy against the threatened injury so clearly demonstrated in the evidence presented on the trial.

Conclusive written evidence that the alleged intention to accept exchange drafts at the counter to prevent embarrassment to plaintiffs by demanding cash was unwillingly forced on defendants by the decision of the Supreme Court in this case is found in the record. The opinion of the court ordering a decree dismissing the original bill was entered by Evans, D. J., on April 3, 1920. Just six days afterward (April 9, 1920), even before the decree was entered, the Deputy Governor wrote to I. W. Arnold, cashier of the Merchants and Farmers Bank of Davisboro, Georgia, regretting that said bank would no longer remit at par. Mr. Arnold was reminded of the campaign then in progress that had been temporarily interrupted by the restraining order in this case and his attention called to Judge Evans' ruling, then about a week old, which Adelson thought would permit defendants to resume activities. This bank was then warned as follows: "It occurs to us that you would perhaps prefer to continue remitting at par rather than have the items presented to you *for payment in cash,* when we make arrangements along that line" (Tr., 128).

Flushed with the supposed victory of a dismissal of the bill, defendants unequivocally threatened plaintiffs with demands for cash. Confounded by the reversal of that decree by the Supreme Court, defendants seek to deny the purpose thus officially expressed. Out of their own mouths they are condemned. Over their own signatures defendants establish plaintiffs' right to the relief sought. See App., p. 2.

COMPLAINANT'S RIGHTS MUST BE MEASURED BY THE FACTS EXISTING WHEN THE BILL WAS FILED.

When a defendant is haled into court on a statement of facts, existing at the time, that justify relief from threatened injury, he cannot avoid an injunctive decree merely by confession and repentance. It is true that injunctions operate *in futuro*, and their grant or refusal may be affected by occurrences between the filing of the bill and the final hearing, but *ad interim* developments must be such as to remove all possibility of future injury.

A change in the law of procedure, or the happening of the event sought to be enjoined, *independently of the act or connivance of the defendant*, furnish cases in point. See Dinsmore *v.* Southern Express Company, 183 U. S., 115; Berry *v.* Davis, 242 U. S., 468; Duplex Printing Co. *v.* Deering, 254 U. S., 464.

Where *the defendant* seeks to change the status and thus avoid the consequences of wrongs or wrongful intent, the grant or refusal of injunction will be determined upon the facts existent when the bill was filed.

This is announced in the cases of Jones *v.* Montague, 194 U. S., 147; Tennessee *v.* Condon, 189 U. S., 64, 70, following Mills *v.* Green, 159 U. S., 651.

The last case cited clearly points out that where the change of status results from the acts of the defendant after service the court will proceed to deal with the rights of the parties as they stood at the commencement of the suit, citing Tucker *v.* Howard, 128 Mass., 361; Attorney General *v.* Gt. Northern, 4 D. G. & Sm., 75; Terhune *v.* Midland Rwy., 36 N. J.

Eq., 318; 38 N. J. Eq., 423; Platteville *v.* Galena, 43 Wis., 493.

The same distinction is drawn in the Trans-Missouri Freight Asso. case, 166 U. S., 290. The same is true in Southern Pacific Terminal Co. *v.* Interstate Commerce Commission, 219 U. S., 498.

The presence of a public interest in the two cases next above cited is paralleled in the case at bar. There is a profound public interest in the result of this lawsuit. Crimination and recrimination resulting in a state of war between a large section of State banks and the Federal Reserve System has existed ever since the policy of inaugurating universal par clearance was adopted by the Federal Reserve Board. It appears in the record to be nation-wide. The repentance of defendants will not stop it. But a permanent injunction against defendants from further prosecution of it would make its successful termination impossible and result in a policy of peace between the Federal Reserve Board and the country banks.

As a part of the contemporary history of the conflict between the two banking systems, attention is called to the Concurrent Resolution No. 33, introduced in the Congress by Senator McLean on the 25th of January, 1923 (subsequently embodied in section 506 (*a*) of the Farm Credits bill approved March 4, 1923), calling for an investigation of the methods of administration of the Federal Reserve Act by the Federal Reserve Board with respect to the reasons which actuate State banks in failing to affiliate with the Federal Reserve System. A perusal of the transcript in this case would illuminate that subject.

With full appreciation of the weight to be given the findings of fact by a trial judge, appellants respectfully insist that the ordinary reasons underlying the unwillingness to reverse on findings of fact are either non-existent or inapplicable here. The controlling proof consists of official written documents incapable of denial. There is no room for difference of opinion as to credibility of witnesses, involving their appearance, their interest, their manner of testifying, etc. Indeed, so far as *facts* go, there is no conflict of testimony, and the evidence fully supports the substantive allegations of the bill, and the decree of the court below should be set aside and a decree entered granting the injunction as prayed for and taxing all costs on defendants. This result, we submit, is imperative if the principles announced by the Supreme Court to be controlling in this case are correctly applied.

THIRD.

THE TRIAL COURT ERRED IN REJECTING THE EVIDENCE OF THE ACTIVITIES ENGAGED IN BY THE FEDERAL RESERVE BANKS UNDER THE APPROVAL OF THE FEDERAL BOARD IN THE OTHER FEDERAL RESERVE DISTRICTS.

(*Assignments of Error Nos.* 4, 5, 6, 7, 8.)

(Tr., 481.)

An amendment to the original bill was tendered and allowed on March 24, 1920, in which specific allegations of the coercive methods employed by other Federal Reserve banks

were set up in the pleadings (Tr., 22). On the trial an additional amendment was allowed, extending the scope of the bill to all the country banks throughout the United States who are not members of the Federal Reserve System and have not agreed to remit at par (Tr., 51). The rejected evidence has been epitomized in the appendix to this brief, beginning at page 61. Detailed comment upon it is unnecessary. It speaks for itself in loud tone and unsavory import. It has resulted in preliminary injunctions by two United States district judges, one at Brookings, Oregon, in the case of Brookings State Bank against Federal Reserve Bank of San Francisco, 277 Fed., 430 (same case, 281 Fed., 224), and Farmers and Merchants Bank of Catlettsburg, Ky., *v.* Federal Reserve Bank of Cleveland, Ohio, decided November 14, 1922, 286 Fed., 566, 610.

All this evidence was admissible to prove the specific allegations of these amendments, which amendments were but an elaboration of paragraph 48 of the original bill charging knowledge of the defendants of the methods employed in other districts and intention to employ the same in enforcing par clearance in the Sixth District. The amendments were germane to the original cause of action and were properly allowed and the proof offered and rejected was in support of these allegations. All the Federal Reserve banks had united in a common enterprise. The policy of their united effort had been formally approved by the Federal Reserve Board given general supervision over them by the law of their creation. Each and all of them were instructed to carry out the common policy in attaining a common object. Under the law, each member of this system (thus combined in the prosecution of a common enterprise, the success of which

ex vi termini, included complete enforcement of the system throughout each of the twelve districts) acted in the interest of all and the acts of each member of the combination became the acts of all. The evidence was objected to on the single ground that it was proof of *res inter alios acta.* It is respectfully submitted that this objection was not sound and that the evidence was admissible under the doctrine authoritatively announced by this court in the case of *Hitchman Coal & Coke Company v. Mitchell, 245 U. S., 229, 249,* and the authorities collated in support of the following excerpt from the opinion of the court in that case on page 249:

> "The objection is untenable. In order that the declarations and conduct of third parties may be admissible in such a case, it is necessary to show by independent evidence that there was a combination between them and defendants, but it is not necessary to show by independent evidence that the combination was criminal or otherwise unlawful. The element of illegality may be shown by the declarations themselves. The rule of evidence is commonly applied in criminal cases, *but is of general operation;* indeed, it originated in the law of partnership. It depends upon the principle that when any number of person associate themselves together in the prosecution of a common plan or enterprise, *lawful or unlawful,* from the very act of association there arises a kind of partnership, each member being constituted the agent of all, so that the act or declaration of one, in furtherance of the common object, is the act of all, and is admissible as primary and original evidence against them. Pleasants *v.* Fant, 22 Wall., 116, 119; Connecticut Mutual Life Ins. Co. *v.* Hillmon, 188 U. S., 208, 218," and other cases cited.

ASSOCIATION AND CO-OPERATION ARE ADMITTED.

The twelve banks of the reserve system are the equival of departments in a business enterprise. Each has cer duties and relations to the system. Governor Harding st that "The Board is doing all in its power to have the clear system to apply equally to all sections and to all bank (App., 25). It directed all banks to co-operate and fol a common plan. It brought the various officials together conference to exchange experiences, to discuss and de procedure, to compare progress, to encourage one by the s cess of another, and to stimulate the efforts of the lagga It tabulated the successes in other districts and furnished t information to the defendants as proof of the uselessnes resistance. It undertook the compilation of the par list, t most powerful weapon of all, and its printing at the G ernment Printing Office.

There was a common purpose expressed by the Gover of the Board "to have the clearing system apply equall all sections and to ALL BANKS." That includes the pl tiffs. The par list covered all sections and the purpose t to have it cover ALL BANKS.

In the printing and preparation of this par list, for t use of all twelve Reserve banks, the Reserve Board w either the principal and the banks the agents, or the ba were principals and the Board the common agent of all them, or they were all joint principals. No other relati ship between them is possible under the co-operation a mitted to exist between them. In relation to this compa the act of one was the act of all.

The admission of defendants speaking through Adelson, Deputy Governor, that "the twelve Federal Reserve banks are co-operating" is not repudiated and stands uncontradicted. This corroborates Governor Harding's statement that the Board was doing all in its power. There was but one par list for all banks. It was essential to the program under which all checks on banks in the Sixth District, caught in the net of the other eleven banks, were sent to the Atlanta bank for collection, and all checks on other districts corralled by the Atlanta bank were sent to the reserve banks in which the drawee banks were respectively located.

The words "embarrassing, annoying and expensive," used by the Governor of the Atlanta Reserve Bank in his letter of December 23, 1919 (App., 20), to 1,050 non-member banks, and used by Deputy Governor Adelson in numerous letters before and after that time to non-member banks, all of which appear in the record, constituted a new expression in banking relations. It required definition and elucidation, especially in view of the fact that it could not be conceived that the defendant bank or its officers intended to use embarrassing, annoying or expensive methods that would render them liable to the penalties provided by the statutes of the various States to protect banks against defamation, or words and acts injurious to their credit. In order for the court to have an accurate insight into what this expression meant, testimony was necessary to show the methods that had been adopted in other parts of the country by other Federal Reserve banks operating under the same law and under the same general supervisory authority. Being a new expression, proper definition could not be found in the books. It is significant that the agents of the various Federal Reserve

banks in the several districts covered by this testimony used the same weapon of coercion, viz., publication of the bank on the par list and presentation of the checks thereby enticed into their hands at the counter for payment in cash. The offer to accept exchange at par was made, *provided* the drawee bank would agree thereafter to remit at par through the mails for checks coming from the Federal Reserve banks. Clearly the testimony offered by the plaintiffs illustrating the acts of agents of Reserve banks in other districts was admissible.

The whole record is now before this court on appeal in equity. It is submitted that it is the function of this court no less than its gracious privilege, to end this litigation on the merits by a final adjudication that will restore peace between the two great banking systems of the United States. Appellants submit, therefore, that if the court should concur in the view that the trial court erred in rejecting this evidence, the rejected evidence should be given such consideration as may be necessary and the judgment of the trial court should be reversed with direction to enter final decree granting the injunction as prayed for under the original and amended prayers of the bill.

Subsidiary Questions.

(*a*) THE COURT ERRED IN ADMITTING THE JOINT ANSWERS OF DEFENDANT UNDER EQUITY RULE No. 58.

(*Assignment of Error No.* 11.)

Interrogatories were propounded by plaintiffs to four named defendants under Equity Rule 58. These questions numbered 1 to 316, inclusive, were in the same words. No

objection to the form of the questions was filed. The four defendants filed joint answers to these questions. Plaintiffs objected to these answers, when tendered in evidence by defendants, on the grounds:

(*a*) that said answers were joint and not several;

(*b*) that Rule 58 required each of said defendants to answer said questions separately and fully in writing under oath, and

(*c*) that said answers of each defendant separately should have been signed and filed by him (Tr., 360).

Said objections were overruled and said answers admitted in evidence. This seems to be in direct conflict with this language of the rule: "Each interrogatory shall be answered separately and fully and the answers shall be in writing, under oath, and signed by the party or corporate officer interrogated."

In commenting on this rule in the case of *Quirk v. Quirk*, 259 Fed., 597, the learned district judge held that the object and purpose of separate answers was to provide against and condemn attempted evasion and evoke the truth, saying: "The truth is always the truth, and telling the truth will not hurt anyone except in so far as he ought to be hurt."

The rule clearly contemplates propounding the same question to more than one witness, as was done in this case with respect to numbers 1 to 316.

Contradistinguished from these questions, numbers 317 to 328 were limited to defendant Wellborn (Tr., 265); 329 to 333 to defendant McCord (Tr., 267); 334 to 341 to defendant Bell (Tr., 269), and 342 to 352 to defendant Adel-

son (Tr., 270). Thus each of these defendants was definitely informed, as the rule prescribed, of the questions he was to answer.

The joint answers defeat the purpose of the rule, and amount to no more than an amendment to the answer of the bank. Where knowledge or intent is called for, ignorance of one of the four could be used to deny joint knowledge or intent by all, or, conversely, knowledge or intent had or entertained by one only would justify a common answer by all. A cursory glance at the questions and answers discloses that the individual knowledge of each of the defendants is not reflected in the joint answers filed, and the evidence in this form should have been rejected.

(*b*) THE COURT ERRED IN DISALLOWING INTERVENTION OF BANKS OUTSIDE THE SIXTH DISTRICT.

(*Assignments of Error Nos.* 9 *and* 10.)

(Tr., 481.)

Plaintiffs amended the original bill by alleging that they were affected by the par-clearance activities of all the Federal Reserve banks in the Federal Reserve System. This amendment was duly allowed and answered (Tr., 51).

The answer averred as a matter of law that banks outside of the Sixth Federal Reserve District were not proper parties to this case (Tr., 56). Plaintiffs formally tendered an intervening petition in behalf of seven banks located in the fourth, fifth, seventh, eleventh, and twelfth Federal Reserve

istricts (Tr., 358). This intervention was disallowed by rder of January 11, 1922 (Tr., 359). Between the allownce of the amendment and disallowance of the intervention ormal testimony was tendered and rejected as set forth in he record. After said intervention was disallowed, a large olume of testimony and documentary evidence was duly endered and rejected under objection of defendants, as set orth in the record.

The object and purpose of plaintiffs in the foregoing proeedings was to enlarge the scope of the bill to embrace the ntire Federal Reserve System. The sole ground of objecon by defendants was that all matters transpiring between anks not located within the territory assigned to the Fedral Reserve Bank of Atlanta (Sixth Federal Reserve Disict) were *res inter alios acta*, and therefore irrelevant and nmaterial.

The intervention was appropriate to the bill as amended. he disallowance of it and rejection of the evidence in suport of it, and of the bill as amended, were errors that afected the whole case.

Conclusion.

The Federal Reserve Board's propaganda claims that a urden of $135,000,000 per annum is imposed on business y exchange charges. This is a theoretical calculation of 10 nts per hundred dollars on the grand total of bank remitnces in the United States. It is wholly misleading because etween large financial centers omission of specific exchange harges is compensated by reciprocal service, and the expense

of accounting is saved in addition (App., 93). Since "fair exchange is no robbery," the great bulk of the service is fully compensated by set off between banks, while interest on the float taxes business substantially the same total amount as specific exchange charges would impose. But, if the figures correctly reflected the facts, they would but serve to increase the outrage involved in forcible destruction of these revenues. This outrage is decreased in amount, but aggravated in character when the net result is to maintain the equitable set off between the large banks in financial centers and deny, not only the profits on but reimbursement for actual cost of the service rendered by the country banks that cannot obtain the advantage of reciprocal service by reason of their isolation.

But isolation is not the only element that militates against reciprocal service between the outlying banks and banks in financial centers. There is the element of seasonal demands for money to move the enormous agricultural products of the West and South. During these seasonal demands the flow is all one way, whereas between the great cities there is a substantially uniform course in the transmission of funds back and forth.

There is a strange prejudice against paying 10 cents to a bank for transporting $100 across the country that does not exist with respect to other "common carriers" of funds. A charge by the express companies or the fee for a post-office money order will be paid as a matter of course; but payment for the identical service by a bank is sometimes resented. A moment's reflection ought to cause revision of this view (App., 89). If it be wise and lawful to remove the cost to business of transporting funds through banking

channels, the same policy applies to the other channels of such transportation. The latest official report of the Postmaster General shows that its receipts for transporting less than a billion and a quarter dollars during the fiscal year ending June 30, 1922, were $7,726,330 or more than 63 cents per $100, as contrasted with 10 cents per hundred commonly charged by banks, which transferred about one hundred times as much as the post-office did. To coerce this service by the banks is a plain violation of the Constitution. But we are told that the Federal Reserve Act provides for it and demands it, and this was the only reply before the court on the former appeal and is the only reply now.

Reviewing the record in perspective, the outstanding errors appear to be the misinterpretation of the Federal Reserve Act as related to exchange charges, and the rejection of the evidence of methods employed by the system in enforcing that interpretation throughout the country. The interpretation of the statute that forms the basis of the par clearance campaign convicts Congress of attempting to authorize domination of State banks over which it has no constitutional jurisdiction. A legitimate purpose within its power is obvious from the debates on the bill viz: to safeguard the expense of the Government in the administration of its fiscal system, and at the same time preserve the legitimate revenues of the banks in the matter of exchange on commercial transactions between themselves. The misinterpretation of the statute by the defendants manifolds the expense of the Reserve banks in making collections and destroys the legitimate exchange revenues on commercial transactions. The two interpretations are diametrically opposed. The one insisted on by plaintiffs accomplishes the purpose Congress had in

mind and preserves the validity of the act; the other contended for by defendants defeats that purpose and makes the act invalid.

Aware of the coercion that forced thousands of banks to give up their legitimate exchange revenues on commercial transactions during the two years preceding the filing of the bill in this case, plaintiffs sought injunctive relief against like coercion in their district *before the actual injury was suffered*. The defendants announced the purpose of adopting embarrassing, annoying, and expensive methods of collection to compel submission and cited the success of like methods in other districts. Those methods included accumulation of checks on non-par banks through the par list and payment thereof demanded in cash in Oregon, Washington, Colorado, Nebraska, Wisconsin, Michigan, Kentucky, Mississippi, Louisiana, and Texas. The variation of detail and amplification of these methods no less than the effrontery of these emissaries of the system, shock the moral sense. A casual reading of the testimony beginning on page 61 of the appendix discloses a persistent course of oppression that seems incredible in an institution created by our Government of laws—not men. The consistency of the methods over so wide a territory demonstrates that they originated at a common center. They are officially recognized, and even after their condemnation by this Honorable Court, the Controller of Collections of the Federal Reserve Bank of Chicago quotes the Counsel of the Federal Reserve Board, representing the whole system, as advising that the decision of this court in this case does not interfere with the check clearing functions of the Federal Reserve banks. Consequently the irregular methods of collection would be continued (App., 74-5).

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Were it not inherently obvious, it has been shown by proof, and by the admissions of the Federal Reserve Board, speaking for all the Federal Reserve banks, that without coercion—force—punitive legislation—or *vis major* of some type, universal par clearance cannot be established. If the defendants of record are sincere in declaring that coercion in any form is to be eschewed by them, then the grant of the relief sought by plaintiffs cannot interfere with their plans. From such outrages as are typically disclosed by the uncontradicted testimony of more than a score of banks in other districts these plaintiffs have convinced this court they are entitled to protection. Nay more, they are entitled to a decree that will prevent the possibility of such injuries. To that end they are forced a second time to seek relief in this Honorable Court. They humbly pray that this relief be now granted in terms that cannot be gainsaid or minimized; in terms that will vindicate the legislative branch of the Government from the unfounded charge of a surreptitious encroachment upon the constitutional rights of these creations of the States; in terms that will rebuke the arrogant assumption and unlawful oppression that has characterized the Federal Reserve Board in the past, and make a recurrence of such conditions impossible; in terms that will emancipate all banks both national and State, whether members or non-members, from a species of tyranny that threatens the usefulness if not the life of the great Federal System that Congress designed in the most constructive financial legislation ever enacted in the history of our Government. All banks should be free to adjust their exchange relations to their several situations. Congress has prescribed the maximum rate of one-tenth of one per cent which all banks will respect, either voluntarily or under the pressure of competi-

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tion. No other regulation or restriction is either wise or lawful. No bank ever has exacted or ever will charge exchange on Government checks.

Insisting upon the honesty of the direct purpose in Congress to minimize the expenses of the Government, when it prohibited the members to charge exchange against the Reserve banks, rather than the suggestion of a duplicitous and unconstitutional design to establish "universal par clearance;" emphasing the intention officially declared by the Federal Reserve Board to utilize this prohibition as a means of enforcing universal par clearance; citing the definite corporate resolutions of defendant Reserve bank expressing a purpose to co-operate in these plans of the Federal Reserve Board to establish universal par clearance; adverting to the official writings of the officers of defendant bank in carrying out the purposes of these resolutions; recalling the admitted methods employed with success and approval in enforcing these plans throughout the system; and, finally, relying upon the former decision of this honorable court settling the principles applicable to these indisputable facts, appellants insist that a reversal of the judgment and decree appealed from is demanded.

Respectfully submitted,

ALEX. W. SMITH,
Solicitor for Appellants.

ORVILLE A. PARK,
MACON, GA.,
SMITH, HAMMOND & SMITH,
THEODORE H. SMITH,
ATLANTA, GA.,
Of Counsel.

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APPENDIX.

Material Allegations of the Bill and Answers Thereto.

Tr., 6, et seq.

The allegations of the bill and amendments are voluminous in matters of inducement and history. This was due to the novelty of the case. Issue has been joined on the pleadings on very few points and these are set forth in the following paragraphs. All the other paragraphs are either admitted or conceded to be academic, and therefore immaterial.

Paragraph 17 (Tr., 6).

17. In a published statement from said defendant Wellborn it is laimed by him that of the 30,260 banks in the United States 26,315 re now remitting at par for checks sent through the mails. Of this umber more than 7,500 are national banks who are compulsory nembers of the Federal Reserve system hereinafter described and ave no discretion in the premises. The others have submitted to his plan either through becoming members or by reason of the oercive measures to enforce submission hereinafter described. In iew of the large number of State banks which have thus apparently urrendered at discretion to the demands of these powerful financial nstitutions, said defendant Wellborn no doubt felt justified in preicting that the necessity to employ coercive measures in the Sixth 'ederal Reserve District would be obviated. Unless protected by the ourts, the country banks in Georgia will be driven either to submit r go out of business, for the reasons herein stated. Hence the proection of the courts is now and hereby invoked.

Answer to Paragraph 17 (Tr., 31).

17-A. Defendants admit that, at the time said bill was filed herein, it of approximately 30,260 banks in the United States 26,315 were emitting to the Federal Reserve banks at par for checks through he mails, and further admit that the defendant Wellborn had so ated. They further admit that of said 26,315 banks, 7,500 or more re national banks. They say further that on January 1, 1921, ere were in the United States approximately 30,523 banks, and at of that number, on said last-mentioned date, all but 1,755 of id banks were remitting to the Federal Reserve banks at par. ith the exception of those allegations which are specifically admitd in this paragraph of the answer, paragraph 17 of the bill of comaint contains only statements of conclusions and therefore requires further answer. Defendants specifically deny, however, that any ercive measures have been used to compel any bank to become a

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member of the Federal Reserve system or to compel any bank to submit to any plan whatsoever.

COMMENT.

The statistics as to membership in the system set forth in this paragraph are taken from defendant's literature and are admitted, but the allegation that affiliation with the system by some of the State banks was the result of coercion is denied. This allegation and denial is not limited to the Sixth District, but embraces the whole system of twelve districts. Proof of surrender under coercion will be found in the excerpts from letters in evidence found in Appendix pp. 40 *et seq.*

Proof of surrender under coercion by banks in other districts and strictly in support of the allegation as to the whole system was tendered and rejected. (App. pp. 61 *et seq.*)

Proof of resistance to coercion is found in the record, and abstracted in Appendix pp. 40, 42, 45.

Proof to the same effect with respect to banks in other districts and strictly in support of the allegations as to the whole system was tendered and rejected. (App. pp. 61 *et seq.*)

It is submitted that the proof admitted carries plaintiffs' burden on this issue, under the general rule that two witnesses are ordinarily sufficient to establish an allegation, especially in the absence of rebuttal. It is argued in the brief, that under the issue joined, the evidence outside the district was erroneously rejected.

If there was no evidence in the case except the minutes of defendant bank and the letters of Adelson, the proof of coercive intention is complete. He who runs as he reads these documents must see the purpose. Until this bill was filed, instead of concealing this purpose, it was expressed as a boast. Note the current reports proudly reporting new accessions since last report, yet deprecating the laggard steps of the Atlanta District in comparison with the other districts.

Trace the movement through the board of directors. On November 14, 1919, the board voted to request the chairman to call *a special meeting* following the anticipated return of Governor Wellborn from the conference of governors, in order that there might be discussed the question of exchange *and of getting the entire district on a par clearing basis.* This special meeting appears to have been held on December 11, and Mr. Adelson's report to the board at that meeting showed how tardy the Sixth District was, in that it had only 778 par-remitting banks in the district out of a total of 2,018, and the number remitting at par included all members, which on December 31, 1919, embraced only 64 State banks.

On motion, the officers of the bank were to be authorized to *proceed with the work and incur any necessary expense,* and a committee was ordered to prepare appropriate resolutions, which were prepared and duly adopted. These resolutions recited the rapid strides made in other districts in *putting* their respective districts upon a par basis, and that the Atlanta bank had not kept pace with these rapid

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strides in *putting par clearance into effect*. The sentiment of the governors, at the recent conference from which Governor Wellborn had just returned, was declared to be that the entire country should be *put* on a par-clearance basis. Therefore the board formally instructed the officers of the bank to *adopt such plans and incur any necessary expense in order to effectively arrange for par clearance*. Every member of the board voted in favor of this resolution. As soon as the physical preparation of the documents to be employed in *putting* par clearance into effect could be prepared and approved, the deputy governor, who was, according to the testimony of Governor Wellborn, appointed to take charge of this matter, got very busy. Annoying, embarrassing, and expensive methods of collection were to be put into effect solely and alone with respect to banks that refused to remit at par. Can it be doubted that the purpose was to have these banks cease their refusal to remit at par? Can it be doubted that it was supposed that these embarrassing, annoying, and expensive methods would compel these banks to agree to remit at par? Does it require any argument to show the purpose was *not* to collect checks, but to *put into effect par clearance?*

The evidence shows that no checks, which alone could form the instrument of annoying, embarrassing, and expensive methods of collection, came to the Federal Reserve bank unless the drawee bank's name was upon the par list. This was clearly understood, and the ultimate threat of Adelson was to arbitrarily place the name of a resisting bank on the par list for the very purpose of supplying this weapon.

It would be a needless waste of time to reiterate here the statements of Adelson in the letters that have been printed for the convenience of the court, wherein, as special officer in charge, he was endeavoring to carry out the instruction of the board to *put par clearance into effect*.

The almost tearful expressions of regret that the officers would be *compelled* to do these things reinforce the conclusion that they knew full well the intolerable situation that would be thereby produced. It is mere trifling with the court to insist that the only motive involved in these methods was to collect the proceeds of the check. The object and purpose to take advantage of the intolerable situation that would be produced by procuring possession of a large percentage of all checks drawn on a dissenting bank for presentation at the counter, and the demand of cash in payment thereof, is so apparent, so obvious, so indisputable, in the contemplation of any impartial mind seeking the truth, that any argument to support it merely tends to becloud the fact.

Paragraph 43 (Tr., 14).

43. (Matters of law.) Petitioners deny the jurisdiction of the defendant Reserve Bank in its corporate capacity, and of each individual defendant under the cover of their official connection with it, over any bank created by the sovereign State of Georgia, which has not voluntarily submitted to said jurisdiction and less than one in

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fifty of such State banks outside of the large cities in the State have seen fit to take that step. There is very little inducement to join it by a bank with any choice in view of the policy of its management, which has transferred it into a money-making institution, entering into competition with its members on whose capital it operates. Petitioners are informed and charge the fact to be that it handles direct drafts with bills of lading attached and demands checks from drawees certified by their individual banks to pay for same, and requires its members to carry all reserves with it, thereby depriving them of all interest on balances. As a result of these practices, petitioners are informed and charge the fact to be that defendant Reserve Bank made over 100 per cent on the capital furnished by its members during the year 1919 and its statement shows average earnings of about 33⅓ per cent per annum since its organization, clear of all expenses of its operation (the amount of which expenses does not appear in its statements), of which earnings only 6 per cent per annum is distributed to its members who furnish the capital. Regardless of the construction or interpretation of the Federal Reserve Act, petitioners are advised by counsel, and therefore allege, that Congress has no power, even by a direct, explicit, and mandatory enactment, to coerce them or other State banks in like condition, against their will, to submit to the jurisdiction of defendant Reserve Bank, either as members or non-member banks. There is no warrant in law for perverting the Federal Reserve Act into an instrument of autocratic tyranny to compel petitioners and other banks created by the State of Georgia to sacrifice their charter rights and legitimate revenues to fatten the swollen profits already piling up in the Federal Reserve bank, which at present are about one and three-eighths times as great as their aggregate capital stock.

Answer to Paragraph 43 (Tr., 35).

43-A. Defendants admit that the profits of the defendant Reserve Bank for the year 1919 amounted to more than 100 per cent of its paid-in capital, and that its earnings since the date of organization have averaged 33⅓ per cent of its paid-in capital. With the exception of those allegations which have been specifically admitted in this paragraph of the answer, paragraph 43 of the bill of complaint contains only statements of conclusions and therefore requires no further answer. Except as heretofore in this paragraph of the answer admitted, defendants deny any proper allegation of fact in said paragraph contained, if any such allegations there be in said paragraph.

Paragraph 44 (Tr., 15).

44. Nevertheless, petitioners allege that said individual defendants, under the cloak of their official connection with the defendant Reserve Bank, threaten and intend to use the great resources of said Reserve Bank to compel petitioners and other banks in like condition to either join said Federal Reserve bank, or else have their business so interfered with and their revenues so depleted by the embarrassing, annoying, and expensive methods now in preparation for

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exploit upon them as to drive them out of business altogether. Petitioners have hereinbefore fully shown how and why a small country bank in a sparsely settled and remote agricultural section of the State cannot meet the requirements necessary to membership in the Federal Reserve Bank, nor can they deplete their revenues by remitting at par and continue the successful prosecution of their small, but useful and necessary, business functions in their respective communities.

Answer to Paragraph 44 (Tr., 35).

44-A. Defendants deny each and every allegation contained in paragraph 44 of the bill of complaint.

COMMENT.

Now that the Supreme Court has qualified the right to present checks and demand cash under all circumstances, the allegations of paragraphs 43 and 44 are proven beyond controversy by the records of defendants in evidence.

Paragraph 45 (Tr., 15).

45. Whether or not the defendant Reserve Bank will accept checks at par drawn on banks not holding membership in it is optional with it and not mandatory. The said bank has been in operation more than five years, and not until recently has it undertaken to handle checks on non-members at par, unless the drawee bank was located at a financial center of such size as to make it what is known as a "par point."

Answer to Paragraph 45 (Tr., 35).

45-A. Defendants are advised that the first sentence in paragraph 45 is a statement of a conclusion, and for that reason the same requires no answer. Answering the last sentence of paragraph 45, defendants say that the same is immaterial and irrelevant. Defendants admit that the defendant Reserve Bank has been in operation since November 16, 1914, and that while it is true that only within a comparatively recent time has the defendant Reserve Bank undertaken to make collection of all checks drawn on all banks in the Sixth Federal Reserve District, yet the service of collecting all such checks has been in contemplation since the organization of the bank. Defendants say that the fact that the defendant bank has not heretofore performed this service for the members of the Federal Reserve system cannot be urged in bar of the right to perform that service at the present time.

Paragraph 46 (Tr., 15).

46. Petitioners are informed and believe, and so charge, that one of the embarrassing, annoying, and expensive expedients to which the defendants intend to resort is to accumulate checks drawn on pe-

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titioners or other banks in like condition in the State of Georgia
the aggregate thereof is a large amount and then send a special
senger to the counter of the bank on which said checks are dr
and demand payment thereof in currency over the counter. S
a course would inevitably drive a small country bank out of b
ness. Without notice as to when such checks will be presented
to the amount thereof, it would be necessary for such bank to
an amount of money in its vault large enough to meet any
gency of this kind and would destroy its capacity to lend out
funds in regular course of business, and therefore cause the los
the interest revenues now derived from such loans. In additio
this, the appearance in a small village, or town, of a stranger and
known person in an automobile, or other conveyance, and his
sequent withdrawal under the eyes of the attendant and cur
crowd of country people of large sums of currency from the
bank, the same to be carried away in the presence, perhaps, of ma
of the depositors of said bank, is calculated to, and in all probabi
would, result in an immediate run on said bank that would promp
put it out of business. The reputation of a bank is exceedingly s
sitive, and any criticism or suspicion of it, whether well o
founded, speedily enlarges into distrust, condemnation, and ruin

Answer to Paragraph 46 (Tr., 35).

46-A. Answering paragraph 46 of said bill, defendants deny t
they had in contemplation the accumulation of checks until the a
gregate reached a large amount before presentation for payment, a
deny that the conclusions of the plaintiffs as embodied in said pa
graph are warranted by any averment of ultimate fact in said p
contained. Defendants deny and disclaim any intention to in
any of the plaintiff banks and deny all other allegations contai
in said paragraph.

Paragraph 47 (Tr., 16).

47. Petitioners allege that such method is useless, tyrannical, ul
vires the charter of said defendant Reserve Bank, and the threat
employ such a method petitioners allege to be a perversion, if no
prostitution, of the functions of such a great institution. When su
methods are employed for the purpose of coercing and oppress
petitioners and other banks in like condition created by the St
of Georgia, it amounts to an outrageous invasion of the rights
your petitioners granted to them under the charter of the great St
of Georgia.

Answer to Paragraph 47 (Tr., 36).

47-A. Answering paragraph 47 of said bill, defendants say t
said paragraph contains no allegations of fact, but only statements
groundless conclusions of the pleader. Defendants, however, in s
swer thereto, deny the charges therein made, and say that said pa

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ph is merely an unwarranted and uncalled-for attack upon the de-dants, unsupported by any allegations in said bill contained.

COMMENT.

The allegations of paragraphs 45, 46, and 47, in so far as matters law are concerned, are covered by the argument as to the true erpretation of section 13. The matters of fact therein stated are tinent and controlling, under the decision of the Supreme Court, d are supported by all the evidence in the case illustrating condi-ns as they existed when the bill was filed. If defendants have re-ted since, the act of repentance demonstrates the original offense.

Paragraph 48 (Tr., 16).

48. Nevertheless, the individual defendants freely admit that this thod has been employed in other States to force unwilling State nks into line, and in view of their letter of December 23, petition-charge that they expect to use this method on petitioners and er banks in like condition in Georgia, unless restrained from ing so by the strong arm of a court of equity.

Answer to Paragraph 48 (Tr., 36).

48-A. Defendants deny each and every allegation contained in ragraph 48 of the bill of complaint. They deny that they have contemplation, or hold in intendment, anything except the col-tion of checks in a perfectly lawful and legal manner, by pre-tation for payment regularly and without accumulation, at the unter of a bank which does not desire to remit at par, upon pre-tation for payment through the mails by the defendant Reserve Bank.

COMMENT.

That Adelson's intentions were the intentions of the bank itself established by Governor Wellborn's testimony while under exami-tion in open court. His evidence is that when the letter of Decem-r 23, 1919, was sent out the defendants were prepared to go ahead d put in par clearance; that Adelson was appointed to take charge putting in par clearance; and he (Governor Wellborn) would k up anything that Adelson did. Adelson warned the outstand-g banks what to expect. That his threats were successful was monstrated to him almost every day. Mr. McCord understood the rce of the plan. The facts thus established, without more, prove laintiffs' case.

Paragraph 49 (Tr., 16).

49. Another embarrassing, annoying, and expensive method hich petitioners are informed and allege on information and be-f that defendants expect to employ, as stated in said letter, is to

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hire a special agent in each town where petitioners or other ... banks in a like town do business, and mail checks on such ... bank to said agent with instructions that he present same at ... counter of the bank upon which same is drawn and demand ... ment in currency. Since this currency would necessarily have ... be transmitted back to the defendant Reserve Bank and the ... thereof paid by it, petitioners charge that such a method is employ... for an ulterior purpose rather than in good faith for the purpose ... collecting said checks, and petitioners allege on information and ... lief, and from the facts hereinbefore set forth, that said ulterior ... pose is to coerce petitioners and other banks in like condition to ... to the will of defendants in the matter of remitting at par to ... their daily letters and ultimately to coerce petitioners and ... banks in like situation to either join said Federal Reserve Bank ... maintain a clearing deposit account with said bank, as hereinbefore ... fully explained. The evils of such a method of collecting ... differ only in degree from those set forth in a preceding paragraph ... where said collection is made by a special messenger in automobiles ... or other conveyances. The effect upon the constant maintenance ... of cash in vault to meet liabilities and the consequent material ... pletion of the reserves of petitioners in financial centers would be ... same.

Answer to Paragraph 49 (Tr., 36).

49-A. *Defendants admit* that in order to collect checks on ... member banks which had declined to remit at par for checks drawn ... upon such banks, and in the hands of defendant Federal Reserve ... Bank for collection, *said defendant bank had intended,* in some ... stances, *to employ agents* in certain towns where such non-member ... banks were respectively located and had intended, from day to day ... in regular course of business, to mail checks so drawn on said non-... member banks to such agents, *with instructions to present the same ... the counters of the respective drawee banks for payment,* and that ... *the defendant may in the future appoint agents* for the same pur... pose and mail checks to such agents *with similar instructions.* Such ... checks, if so sent to such agents, will be sent promptly upon receipt ... thereof, and in regular course of business, without accumulation. ... Defendants deny, however, that in thus planning for the appoint... ment of or the mailing of such checks to such agents the defendant ... Reserve Bank or any of the defendants had any purpose or intent ... *other than to collect the said checks* received by the defendant bank ... for collection and in regular course of business. Should the said ... defendant bank in the future appoint such agents the appointment ... will be solely and only in line with the *bona fide* intent to make such ... collection in regular course of business. Defendants also deny that ... the effect upon any drawee bank of such a course of dealing would ... be as charged in said paragraph. With the exception of those al... legations which have been specifically admitted or denied in this ... paragraph of the answer, paragraph 49 of the bill of complaint con... tains only statements of conclusions and therefore requires no fur... ther answer.

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Paragraph 50 (Tr., 17).

50. Another embarrassing, annoying, and expensive method which petitioners are informed and allege on information and belief that the defendants expect to employ in their effort to coerce submission of petitioners and other banks in like condition to submit to the jurisdiction of said Federal Reserve bank is the transmission of said checks to the local postmaster or through the express companies for collection in currency over the counters of the bank on which they are drawn. Since the rates for such collections by express or post-office remittance are equal to or greater than the rate of exchange now charged on remittances to cover such checks, the employment of such a method petitioners allege to be in bad faith. The evils of having checks thus presented and paid in currency would be as great under this method as under either of the others and would materially interfere with the successful prosecution of the legitimate business of petitioners and other banks in like condition, which they are now expressly authorized to do under their several charters from the State of Georgia.

Answer to Paragraph 50 (Tr., 37).

50-A. *Defendants admit* that, in order to collect checks on non-member banks in its hands for collection and drawn upon banks which have declined to remit therefor at par to the defendant Reserve Bank, said defendant Reserve Bank has in some instances *transmitted checks* drawn on said non-member banks *to local express companies with instructions to present at the respective counters of the drawee banks for payment*, and that the defendant Federal Reserve Bank *may in the future continue to so transmit* such checks *with similar instructions*. Defendants deny, however, that in the transmission of checks as aforesaid the defendant Federal Reserve Bank or any of the defendants had or will have *any purpose other than to collect said checks*. In cases where such checks have been so presented for payment through express companies, they have been presented in regular course of business and without accumulation or intent to accumulate the same for any ulterior purpose, and if in the future such checks should be so presented they will be presented in regular course of business, promptly, as received by the defendant Reserve Bank for collection, and without accumulation. With the exception of those allegations which have been specifically admitted or denied in this paragraph of the answer, paragraph 50 of the bill of complaint contains only statements of conclusions and therefore requires no further answer.

Paragraph 51 (Tr., 17).

51. There may be other methods of oppression in preparation by defendants, designed to force submission of petitioners and other State banks of like condition to their will, of which petitioners are

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not informed, but petitioners allege that any method which disr
the orderly course of business involved in the collection of che
through the mails would necessarily be ruinous to the busines
petitioners and other banks in like condition, if persisted in,
would result in either the submission of petitioners or the aband
ment of their business altogether under their State charters. In
dition to this, the economic results of such method of doing busi
would be a tremendous injury to all the business interests in
State, including the business of petitioners and other banks in
situation. It is well known, and the court will no doubt take
dicial cognizance of the fact, that the relation of actual currency
bank transactions in the country as a whole is about one to twen
and any scheme which interferes with the orderly and contin
course of such dealings clogs the channels of commerce, increas
the risk of doing business by handling large amounts of curre
and added expense of insurance against burglary, theft, and def
cation, to say nothing of the loss of revenue caused by the disturb
of the ordinary reserves now necessary to meet the requirement
the law regulating State banks and the necessities of the busines
the banks themselves.

Answer to Paragraph 51 (Tr., 37).

51-A. Defendants say, in answer to paragraph 51 of said bill, t
the same consists wholly of conclusions of the plaintiffs, and co
tains no averment of pertinent or relevant facts which can be a
swered in such a way as to join issue thereon. Defendants say th
said paragraph is wholly immaterial, irrelevant, and impertinent
any issue attempted to be made by said bill, and that the conclusio
therein contained are unsupported by any allegations of fact an
where in said bill contained. If it should be considered, howeve
that said paragraph contains any proper or specific averment of a
threatened or unlawful act, defendants deny the same and each a
every part thereof.

Paragraph 52 (Tr., 18).

52. Petitioners allege that the adoption of any of the metho
hereinbefore described, or any like methods, for the purpose of c
ercing petitioners or other banks in like situation to relinquish th
revenue accruing to them by exchange on remittance would oper
to deprive petitioners and other banks in like condition of the
property without due process of law, in violation of that clause of th
Fifth Amendment of the Constitution of the United States whic
provides that no person shall be deprived of life, liberty, or proper
without due process of law.

Answer to Paragraph 52 (Tr., 37).

52-A. Paragraph 52 of the bill of complaint contains only sta
ments of conclusions and therefore requires no answer. Defendan
deny, however, that any method of collecting checks which any

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he defendants contemplate or which is properly charged in the bill f complaint is or would be an infringement of any constitutional, gal, equitable, or other right of the plaintiffs.

Paragraph 53 (Tr., 18).

53. Petitioners allege that, relatively speaking, the service of these nall country banks to their respective communities is as necessary nd important to those communities as are the services of larger in- itutions in populous cities, including the Federal Reserve system self, and the public policy of the State of Georgia, as found in its onstitution and laws, encourages the creation and activities of said nall country banks. Of the 792 banks in the State of Georgia, pe- itioners are informed and believe that 610 are chartered by the State f Georgia, the others being national banks. Of the 610 State banks, etitioners are informed 510 are located outside of the large cities of he State and come within the classification of country banks. Of he 510 country banks, petitioners are informed that 224 have a apital stock of $20,000 or less, and not one of these banks could meet he conditions necessary to membership in the Federal Reserve Bank ithout the increase of its capital stock to a point beyond which it ould earn taxes and dividends thereon, and such increase would n many cases be impossible and the additional stock could not be old. On the other hand, petitioners are informed and believe, and o allege, that none of said small banks could successfully continue n business without the benefit of the compensation for their services or remittance covering checks, as hereinbefore explained. Conse- uently, if the coercive schemes of the defendant are permitted to ructify, these small but useful and necessary State institutions will ecessarily be driven out of business and the public policy, to say othing of the local self-government, of the great State of Georgia ill be outraged and overridden by the autocratic tyranny proposed o be exercised by the defendants hereto, operating in the name, but utside the power, of the defendant Reserve Bank created by Con- ress for a purpose entirely foreign to any such objects and purposes.

Answer to Paragraph 53 (Tr., 38).

53-A. Defendants are without knowledge as to the number of anks in the State of Georgia, and as to the number of banks which ave been chartered by the State of Georgia, and as to the number f banks in Georgia located outside of large cities, and as to the mount of capital stock which banks in Georgia actually have or ould sell or could profitably employ. With the exception of those llegations as to which defendants have stated in this paragraph of he answer that they are without knowledge, paragraph 53 of the bill f complaint contains only statements of conclusions and therefore equires no further answer. Defendants deny, however, each and very allegation of said paragraph with the exception of those allega- ions as to which defendants have stated in this paragraph of the nswer that they are without knowledge.

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Paragraph 54 (Tr., 18).

54. Upon the receipt by petitioners and other banks in like si
ation in Georgia of said letter, Exhibit B, and its inclosures, all t
recipients declined to accede to the demand of defendants to re
at par, and a committee was appointed to confer with the defend
on behalf of petitioners and other banks in like situation in an eff
to accommodate the situation and persuade the defendants to rec
from their effort to compel compliance with their demands. T
committee conferred with the individual defendants herein nam
on more than one occasion, and was informed on each occasion t
the defendants intended to insist upon remitting at par or else wo
employ methods to compel such course on the part of petitioners
other banks in like situation; and stated that they were prepari
their plans of action and would put them in operation as soon as th
were completed.

Answer to Paragraph 54 (Tr., 38).

54-A. Defendants admit that plaintiffs and most of the other ban
to which the letter, Exhibit "B," was sent by the defendant Fede
Reserve Bank are not remitting at par to the defendant Federal R
serve Bank, and that defendants have conferred with a committee
Georgia bankers with regard to par collection. Except as herein
fore specifically admitted in this paragraph of the answer, defendan
deny each and every allegation contained in paragraph 54 of the b
of complaint.

Paragraph 55 (Tr., 19).

55. Petitioners are informed and believe, and so charge, that s
individual defendants are now actively engaged in the preparat
and perfection of plans which will put in operation said measu
hereinbefore described, or else other measures of like import, wi
the avowed object of compelling petitioners and other banks in li
situation to accede to said demand. Said defendant—Bell, cash
of the defendant Reserve Bank—delivered an address, as petitione
are informed, before the Rotary Club of Atlanta on the 5th day
January, 1920, in which he said "that *the charging of exchange*
checks and other instruments sent to various banks for collection
vice which should be eradicated." And the said Bell, in co-operat
with the other individual defendants named, is preparing measu
to compel petitioners and other banks in like situation to forego s
charges for exchange, and the individual defendants advise p
tioners and the committee of country bankers representing petitio
and other banks in like situation that as soon as said plans are re
for operation they will be put into effect.

Answer to Paragraph 55 (Tr., 38).

55-A. *Defendants admit* that the defendant M. W. Bell, in an a
dress before the Rotary Club of Atlanta on the 5th day of Janua

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1920, used the words which appear in quotation-marks in paragraph 55 of the bill of complaint. Except as hereinbefore specifically admitted, defendants deny each and every allegation of paragraph 55 of the bill of complaint.

Paragraph 56 (Tr., 19).

56. Petitioners allege that said efforts to coerce petitioners and other banks in like situations, through the instrumentality of said defendant Reserve Bank, are illegal, oppressive, and unwarranted by the charter powers and functions of said bank, and that the efforts of said individual defendants in that direction are chargeable to them as individuals and constitute an invasion of petitioners' rights and the rights of other banks in like situation, for the reasons hereinbefore fully stated. And it is necessary for the protection of said rights that said defendant Reserve Bank in its corporate capacity and said individual defendants in their individual capacities should be restrained by the orders of this court from further prosecution of their plans to forcibly and illegally coerce petitioners and other banks in like situation to accede to their demands or else suffer serious embarrassment, annoyance, and expense in the conduct of their business.

Answer to Paragraph 56 (Tr., 38).

56-A. Paragraph 56 of the bill of complaint contains only statements of conclusions and therefore requires no answer. Defendants deny, however, each and every allegation thereof which may be considered as containing any averment of issuable fact.

COMMENT.

The foregoing paragraphs allege intention to accumulate checks on petitioners in large aggregate amounts and through messengers or other agencies present them at the tellers' windows, and demand payment in cash to the injury of the local banking resources and reputation of the banks. The allegation is the existence of an intention or purpose *at the time the bill was filed.* An open threat by defendant of intention to "adopt other methods of collection that would prove embarrassing, annoying and expensive" to petitioners had been officially sent out by registered mail to the original plaintiffs, and more than a thousand other non-par banks in the district (*post*, 20). That threat was enclosed with an official circular of the Federal Reserve Board stating that "the action of the various Federal Reserve banks in extending their par lists has met with the cordial approval of the Federal Reserve Board" (*post*, 18). Defendant's communication directs attention to this enclosure in order that plaintiffs might fully understand the necessity for the efforts of the Federal Reserve banks (plural) towards establishing a national par list. The statistics showing the progress of the campaign as a whole are set forth to the effect that 16,196 non-member banks were on the par lists, and in justice to them and the 8,955 member banks, defendant must begin to handle all checks drawn on any bank in the United

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States. Clearly, the plans were not restricted to the Sixth District they were nation-wide. The threatening language as to unusual methods of collection was general as to detail but specific as to character, viz., embarrassing, annoying and expensive to petitioners. Petitioners' allegations describe some of the methods employed in other districts in extending their par lists that had met with the cordial approval of the Federal Reserve Board—the supreme central authority over all the Reserve Banks—and charged defendants with intention to employ the same methods. The rejected evidence shows that in November, 1919, less than sixty days before this threat was made representatives of the Federal Reserve Bank of Kansas City went as special messengers to the counter of Cones State Bank of Pierce, Nebraska, and presented a large number of checks aggregating an amount in excess of the cash actually in (or legally required to be in) the vaults of the bank and demanded their payment in currency. A solvent draft on the reserve deposits of the bank was tendered for the full amount demanded, and was refused, not on the ground that it was not good, but acceptance of it was offered if the drawee bank would sign a par remittance agreement. That being refused, time was requested to go to a neighboring bank and get the draft cashed and only five minutes were allowed for that purpose, but it was obtained and the checks paid. Some of them were dated three weeks prior to presentation. The cash thus collected was made up into large stacks of currency and silver and placed in valises in the presence of customers of the bank, and one of its depositors became so alarmed he threatened to withdraw his balance on deposit. (App. pp. 77, 78).

Proof of these facts was tendered and rejected on the trial.

Amendment to the Prayers of the Original Bill.

(Tr., 50.)

Now come the complainants in the above-stated case, by their solicitors, and amend the prayers of the original bill therein by adding the following additional prayers, to wit:

(7) That the defendants be permanently enjoined from publishing the name of any non-member bank that does not maintain with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank on the so-called par lists of the Federal Reserve bank in the Sixth District, unless and until such non-member bank has given its consent to such publication.

(8) That the defendants be permanently enjoined from furnishing the names of any non-member bank in the Sixth Federal Reserve District that does not maintain with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank to any Federal Reserve bank in any other district or to the Federal Reserve Board a

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Washington, D. C., for the purpose of having same published on the so-called par list of any Federal Reserve bank, unless and until such non-member bank has given its assent to such use of its name.

(9) That the defendants be permanently enjoined from continuing the publication or authorizing any other Federal Reserve bank or the Federal Reserve Board to continue the publication on any so-called par list of the name of any non-member bank that does not maintain with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank, unless such non-member bank has previously given its consent to such use of its name and has not lawfully withdrawn or does not lawfully withdraw its consent to such continued use of its name.

(10) That the defendants be permanently enjoined from publishing or using the names of such non-member banks contrary to the injunction prayed for in the three preceding prayers with respect to any published list whatsoever that is designed to accomplish the same uses and purposes as the current so-called par lists, regardless of the name or names employed to designate such lists.

(11) That the defendant Federal Reserve Bank, its officers and agents, be permanently enjoined from accepting or receiving for collection or otherwise any check on any non-member bank that does not maintain with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank, and that has not agreed and does not continue to agree to remit the proceeds of any such check without charge for such remittance of the proceeds thereof, whether such charge be made under the description of exchange or otherwise.

(12) That the defendants be permanently enjoined from returning as dishonored any check on such non-member banks payment of which was refused solely because lawful exchange charges for remittance were not allowed.

Decree.

(Tr., 351.)

This cause came on for final hearing on the bill of complaint and the amendments thereto, the answer of the defendants and the amendments thereto, upon papers heretofore read, and former orders and decrees made herein, upon evidence submitted in open court by the plaintiffs and the defendants respectively, and upon argument of counsel,

Upon consideration whereof the court being fully advised in the premises,

It is considered, ordered, adjudged and decreed, that under sections 13 and 16 of the Federal Reserve Act, the defendant, the Federal Reserve Bank of Atlanta, is empowered to accept any and all checks payable on presentation, when deposited with it for collection,

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which checks, thus received, must be collected at par by the defe
ant, the Federal Reserve Bank of Atlanta, without deduction for
called exchange or otherwise.

It is further considered, ordered, adjudged and decreed, that t
defendant, the Federal Reserve Bank of Atlanta, in discharging
duty with respect to the collection of checks deposited with it
with respect to performing the functions of a clearing house, is e
powered to adopt any reasonable measure designed to accomp
these purposes, and may send such checks to the drawee bank
rectly for remittance through the mails without cost of exchan
and if the drawee bank refuses to remit without deduction for
cost of exchange, it is in the power of the defendant, the Federal
serve Bank of Atlanta, to employ any proper instrumentality
agency to collect the checks from the drawee bank, and it may le
mately pay the necessary cost of this service.

It is further considered, ordered, adjudged and decreed, that in
exercise by the defendant, the Federal Reserve Bank of Atlanta, of
clearing house functions, the process of the daily collection of che
is not rendered unlawful because of the fact that of the checks h
dled two or more of them may be drawn on the same bank.

It is further considered, ordered, adjudged and decreed, that in
inauguration by the defendant, the Federal Reserve Bank of Atla
of its par clearance system the said defendant bank was not insp
by any ulterior purpose to coerce or injure any non-member ba
which refused to remit at par.

It is further considered, ordered, adjudged and decreed, that
defendant, the Federal Reserve Bank of Atlanta, in the inaugu
tion of its par clearance system, did not intend to accumulate che
upon country or non-member banks until such checks reach a la
amount and then cause them to be presented for payment over
counter, so as to compel the plaintiffs to maintain so much cash
their vaults as to drive them out of business, as an alternative
agreeing to remit at par.

It is further considered, ordered, adjudged and decreed, that
evidence submitted by plaintiffs is insufficient to sustain any cha
in the bill that the defendant, the Federal Reserve Bank of Atla
was acting illegally or exercising any right which it had so as to
press or injure the plaintiff banks.

It is further considered, ordered, adjudged and decreed, that i
a legitimate feature of the clearing house functions of the defe
ant, the Federal Reserve Bank of Atlanta, to publish a par cle
ance list, that is, a list of banks checks drawn on which will be
lected at par by the Federal Reserve banks, and that in the pu
cation of such lists the defendant, the Federal Reserve Bank of
lanta, may properly enter thereon the names of towns or cities, w
a representation that the defendant bank will undertake to col
at par checks drawn on any bank (member or non-member) in su
town or city.

It is further considered, ordered, adjudged and decreed, that in
much as a conclusion may be drawn from the appearance of a ban
name on the par list that it agrees to remit at par, or has agreed

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nter the par clearance system, the defendant, the Federal Reserve ank of Atlanta, its officers, servants and agents, be and they are ereby enjoined and restrained from publishing, upon any par list sued or to be issued by the said defendant, the Federal Reserve ank of Atlanta, *the name* of any non-member bank being a plain- ff in this cause unless such non-member bank consents or has con- nted to remit at par.

It is further considered, ordered, adjudged and decreed, that, ex- pt for the injunction granted in favor of the plaintiffs in the pre- ding paragraph of this decree, said plaintiffs are not entitled to an injunction for any other matter or thing complained of against the fendants in the bill and its amendments, and relative to all such atters an injunction is denied.

It is further considered, ordered, adjudged and decreed, that the xable costs in this case be equally divided between the plaintiffs nd the defendants.

It is further considered, ordered, adjudged and decreed, that the mporary restraining order heretofore granted in this cause is dis- lved.

This 25th day of March, 1922.

Exhibit A to the Bill.

(Tr., 74.)

FEDERAL RESERVE BOARD

WASHINGTON

December 11, 1919.

ubject: Questions of Law and Policy Involved in Matter of Collecting all Checks at Par.

EAR SIR:

In view of complaints which are being made from time to time oncerning the policy of Federal Reserve Banks in collecting checks n all points in their respective districts at par, there is enclosed for our information a copy of a letter which was sent to a protesting on-member bank in one of the districts, which defines the questions f law and policy involved.

Very truly yours,

——— ———,
Governor.

To Chairmen and Governors of all F. R. Banks.

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FEDERAL RESERVE BOARD

WASHINGTON

DEAR SIR:

Receipt is acknowledged of your letter of the —— in which y protest against the policy which has been adopted by the Federal R serve Banks with the approval of the Federal Reserve Board in t matter of the collection of checks which are received by Federal R serve Banks from their member banks or from non-member ba which maintain clearing or collection accounts with them.

The Board's action is based upon its conception of the very c dent purposes of the Federal Reserve Act. Section 13 of the A begins as follows: "Any Federal Reserve Bank may receive fr any of its member banks, and from the United States, deposits current funds in lawful money, national bank notes, Federal R serve notes, or checks, and drafts, payable upon presentation, a also for collection, maturing notes and bills." Even though t Federal Reserve Board has heretofore ruled that the permiss "may" as used in the foregoing paragraph should not be constru to mean the mandatory "shall," nevertheless it is clear that a Fe eral Reserve Bank in order to do any business whatever must exe cise some of the permissive powers authorized by law. It would impossible otherwise for a Federal Reserve Bank to afford to its me ber banks many of the privileges which the law clearly contempla and to which the member banks are clearly entitled. But indepe ently of a discussion of this phase of the situation, it seems to t Board that doubts upon this question are resolved upon a consid tion of the provisions of Section 16. "Every Federal Reserve Ba shall receive on deposit at par from member banks or from Fede Reserve Banks checks and drafts drawn upon any of its deposito In this case, the obligatory "shall" is used so that there is no opti in the Federal Reserve Bank so far as checks and drafts upon its d positors are concerned. From this it may be argued that as the d positors of a Federal Reserve Bank are member banks there is no o ligation upon the Federal Reserve Bank to receive on deposit at p checks on non-member banks, but even if the language of Section be construed as permissive there seems to be no question that t Federal Reserve Bank has the *right* to receive on deposit from a of its member banks any checks or drafts upon whomsoever drawn provided they are payable upon presentation. The whole purpo of the Act demands that in justice to member banks, they shou exercise that right.

Section 16 further provides that the Federal Reserve Board "m at its discretion exercise the functions of a clearing house for su Federal Reserve Banks * * * and may also *require* each su bank to exercise the functions of a *clearing house* for its memb banks." In accordance with the purpose of this paragraph, the Fe eral Reserve Board, with the view ultimately of establishing a u versal or national system of clearing intersectional balances as w as bank checks and drafts, has established a gold settlement fu

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through which daily clearing between all Federal Reserve Banks are consummated and has also required each Federal Reserve Bank to exercise the functions of a clearing house for its member banks. In order, however, to make fully effective its facilities as a clearing house in accordance with the terms of this section, there does not seem to be any doubt that the Federal Reserve Bank should not only exercise its obligatory power to receive from member banks checks and drafts drawn upon other member banks, but that it should also exercise its permissive power to receive from member banks any other checks and drafts upon whomsoever drawn, provided that they are payable upon presentation.

There are no doubt many non-member banks without sufficient capitalization to make them eligible for membership in the Federal Reserve System, but provision is made for such banks in Section 13 by authorizing the Federal Reserve Banks, for purposes of exchange or of collection, to receive deposits from any non-member bank or trust company. *But for the fact that the small country banks are able to have their out of town items credited at par by some city correspondent, there is no doubt that many more of them would avail themselves of the non-member collection privilege than have done so.*

There is a proviso in Section 13 which allows member and non-member banks to make reasonable charges "to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but *no such charges shall be made against the Federal Reserve Banks.*" This has been construed by the Attorney General of the United States as meaning that a Federal Reserve Bank can not legally pay any fee to a member or non-member bank for the collection and remittance of a check. It follows, therefore, that if the Federal Reserve Banks are to give the service required of them under the provisions of Section 13 they must in cases *where banks refuse to remit for their checks at par use some other means of collection no matter how expensive.*

The action of the various Federal Reserve Banks in extending their par lists has met with the cordial approval of the Federal Reserve Board, which holds the view that under the terms of existing law, the Federal Reserve Banks must use every effort to collect all bank checks received from member banks at par. Several of the Federal Reserve Banks are now able to collect on all points in their respective districts at par and new additions to the other par lists are being made every day. The Board sees no objection to one bank charging another bank or a firm or individual the full amount provided in Section 13 of the Federal Reserve Act (10 cents per $100) and has not undertaken to modify these charges, but the Act expressly provides that no such charge shall be made against the Federal Reserve Banks.

It is the Board's duty to see that the law is administered fairly and without discrimination and that it applies to all banks alike, and it is making an earnest endeavor to carry out the laws as construed by

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the highest legal authority of the administrative branch of the G ernment.

Exhibit B to the Bill.

(Tr., 77.)

FEDERAL RESERVE BANK

OF ATLANTA

DEAR SIR:

As you know, the Federal Reserve Bank of Atlanta and branches have not been handling checks and drafts drawn upon bank. This was not meant as a reflection, but was due to the that you have not signified your willingness to remit at par for checks, and under the provisions of the Federal Reserve Act, as strued by the Attorney General of the United States, we are not mitted to pay exchange charges for the collection of bank checks drafts payable upon presentation.

However, *the time has now arrived*, when, in justice to the S member banks of the Federal Reserve System, and the non-mem banks who maintain clearing accounts with the various Federal serve Banks, together with the 16,196 non-member banks who remitting at par, *we must*, in compliance with the intent of the F eral Reserve Act, begin receiving on deposit, at par, checks and dr payable on presentation drawn on any bank in the United St *whether a member of the Federal Reserve System or not.* T will include the checks and drafts drawn upon your bank, and *purpose of this letter is to ask that you join the vast army of remitting banks* by advising us it will be agreeable for us to incl your name in the next issue of our par list, and that you will re to us at par for items drawn upon you. While, as stated, the F eral Reserve Act does not permit us to pay exchange for the rem tance of bank checks and drafts payable upon presentation, *we incur any cost that is necessary in order to carry out the purpos the Act, and we would very much regret to be forced to adopt o methods of collection that would prove embarrassing, annoying expensive to you.*

In order that you may not incur expense in remitting to us at for items drawn upon you, we will—

1. Enclose with each cash letter a stamped envelope for ret remittance;

2. Permit you to send us currency, at our expense, in payment our letters, if you prefer to remit in that form instead of exchan such currency, if gold, silver, minor coin or $1 and $2 bills to be s us by express, charges collect—bills of larger denomination than to be sent us by registered mail, insured, you to deduct the cos postage and registration, and insure the shipment under our pol we furnishing you the necessary declaration forms;

3. Permit you to open with us a non-member clearing accou and send to us for credit, at par, items drawn on any of the 25,

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nks in the United States shown in our par list, which list we hope announce in a short time covers the remaining 5,109 banks, that not now remitting at par. The items so sent us would be credited us to an uncollected funds account, and be transferred, when ilable in accordance with our time schedule, to a collected funds count. The balances shown in the collected funds account would available to you for use in paying for our cash letters sent you; r only requirement being that a sufficient balance be maintained the collected funds account to offset the items that are in transit you for remittance.

Any excess balances in the collected fund account would be subt to your check as you might desire, or we would make wire transs for you, charging only the cost of telegrams, or ship you curcy at your expense. As a matter of information would say that our member banks, the cost of telegrams incident to wire transs and shipments of currency are absorbed by us. So that you may ualize *the progress that has been made in the establishment of a tional par list,* we enclose a map of the United States from which u will note that 24 States and the District of Columbia are entirely r, and ten States are nearly par.

Also, in order that you may fully understand the necessity for e efforts of the Federal Reserve Banks towards establishing a nanal par list, we enclose copy of a letter written to a non-member nk, which defines the questions of law and policy involved.

The fact remains that the Federal Reserve Act is a law passed by jorities in both Houses of Congress, and neither the Federal Reve Board, nor the Federal Reserve Banks, can do other than fol- the mandates thereof.

We wish to point out in this connection, that, while we would exct you to remit at par for checks and drafts drawn upon you, you uld still be in a position to charge exchange for the collection of ll of lading drafts, maturing notes, and other purely collection ms, and it is probable that the profits derived from the handling these items represent the larger proportion of your exchange earngs.

Also your remitting to us at par would not prohibit you from harging your depositors at time of deposit, at the legal rate of inrest to cover the time involved in the collection of out of town tems.

We trust you will give the matter the earnest consideration it derves, and will advise us that you will remit to us at par for checks nd drafts drawn upon you.

Awaiting the favor of your reply, for which stamped envelope is nclosed, we remain,

Yours very truly,

M. B. WELLBORN,
Governor.

Excerpts from Official Communications of the Federal Re Board.

(Tr., 122.)

WASHINGTON, *April* 5, 19

Subject: Federal Reserve Clearing System.

DEAR SIR:

There is enclosed herewith for your information copy of a l written to a United States Senator in reply to a letter from hi the Board with regard to a complaint made to the Senator by a banking commissioner that banks in certain States have been g special privileges by the Federal Reserve Board in being perm to continue their exchange charges while banks in other State remitting at par.

Very truly yours,

——— ———,
Governo

Enclosure.

To Chairmen of all F. R. Banks.

April 1, 19

I have your letter of March 31st enclosing copy of a letter f the Commissioner of Banking of the State of Wisconsin. I much obliged to you for giving me an opportunity of remov mistaken impression that the Commissioner appears to have banks in certain States have been given special privileges b Federal Reserve Board by being permitted to continue the change charges while banks in other States are remitting at pa

I enclose for your information copy of a response made b Board on January 26, 1920, to a resolution of the Senate, whic plains at considerable length the position that has been taken b Federal Reserve Board and the various Federal Reserve Banks i matter of the country-wide clearing of checks. In this comm cation reference is made to the provisions of Sections 13 and the Federal Reserve Act and to the opinion of the Attorney Ge of the United States as to the intent of these sections. *The Bo charged with the duty and responsibility of inaugurating a com check clearing system throughout the United States;* the Federa serve banks must receive at par from member banks checks whomsoever drawn which are payable upon presentation, and th called "Hardwick Amendment" to Section 13 authorizes both m ber and non-member banks to make "reasonable charges, to b termined and regulated by the Federal Reserve Board, but in no to exceed 10 cents per $100 or fraction thereof, based on the of checks and drafts presented at any one time, for collection or

nt of checks and drafts and remission therefor by exchange or erwise; *but no such charges shall be made against the Federal serve Banks.*"

In view of the opinion of the Attorney General, the Federal Reve Banks do not feel authorized to pay any charges to banks for mittances for checks drawn upon them and sent for collection by Federal Reserve Banks. While banks are still authorized to arge each other for such service, they are prohibited from charg- the Federal Reserve Banks, which are required to receive from mber banks at par all checks which are payable upon presentation. us it came about that the Federal Reserve Banks found them- es in possession of checks drawn upon non-member banks which y could not send to the banks upon which the checks were drawn the reason that those banks had declined to remit at par, and it ame necessary therefore, *as the law does not provide any penalty on non-member banks for refusing to remit at par,* for the Fed- l Reserve Banks *to begin a campaign of education* to induce non- mber banks to remit at par, *or failing this, to provide themselves th some other means of collecting checks drawn upon non-assent- ing banks.* * * *

Since the establishment of the Federal Reserve Banks the cost of nsferring balances from one section of the country to another has en almost entirely eliminated. Each Federal Reserve Bank carries portion of its gold reserve in a gold settlement fund which is kept the Treasury at Washington, and there is a daily telegraphic clear- g conducted by the Federal Reserve Board for all twelve banks and r their branches. The amount of gold in the fund is practically table quantity, but its ownership varies from day to day accord- g to the debits and credits to the different banks. Transfers are de by the Federal Reserve Banks for member banks, and also for n-member banks through the medium of member banks, by tele- ph without any charge whatever to the member bank or its client, *costs being borne by the Federal Reserve Banks.* Thus, a bank Wisconsin or California, Maine or Texas, can secure an instan- neous transfer to any one of the twelve Federal Reserve cities or the twenty cities where there are branch Federal Reserve Banks thout any expense whatsoever, and the sum total of these trans- rs is settled daily through the gold settlement fund above referred *The Federal Reserve Banks pay all costs of transporting cur- ncy to or from their member banks as well as transportation charges currency sent them by non-member banks in payment of checks.* The total volume of transactions through the gold settlement fund the year 1919 was approximately $74,000,000,000, and the total st, including the expense of the leased wires, was about $250,000. his cost was borne by the Federal Reserve Banks and does not repre- nt any expense whatever to the member banks or their customers. hus it will be seen that the basic cost of making domestic exchange the year 1919 was three-tenths of a cent for each $1,000 trans- rred. A charge of 10c. per $100 on the amount cleared through e Gold Settlement fund would have involved an expense of $1 for ch $1,000 transferred, or about $74,000,000 for the entire amount.

The intra-district clearings made by the Federal Reserve Ba
eliminating duplications, amounted to about $135,000,000,000
the total expense of these transfers was borne by the Federal Re
Banks. Had the Federal Reserve Banks been obliged to pay
these transfers at the rate of 10c. per $100, it will be seen that
total expense would have been $135,000,000, which amount is fa
excess of the total earnings of the Federal Reserve Banks and th
fore could not have been absorbed by them. If not absorbed
charge would have had to have been transferred to the depositors
the checks, so it will be seen that a charge of 10c. per $100 upon
business handled by the Federal Reserve Banks would have inv
last year a cost to the commerce and industry of this country o
least $135,000,000.

However, the practice of making exchange charges, which ha
when there was a real justification for such charges because of
expense of transferring funds, had become so deeply rooted that
of the banks very naturally looked upon the charge as a normal
legitimate source of revenue and were reluctant to give it up. (
*the Federal Reserve Act was amended in June, 1917, the Federal
serve Banks had no mandate for undertaking to collect checks
non-member banks at par*, and their activities with respect to c
ances were devoted mainly to the collection of checks on mem
banks. But after the passage of the "Hardwick Amendment" w
the proviso above quoted, which is underscored, *it became the
of the Federal Reserve Banks to undertake to establish a comp
check clearing system*, including checks drawn on non-mem
banks as well as on members. There are approximately two
thousand non-member banks in this country, and at the time
Act was amended, three years ago, a large majority of them w
firmly committed to the policy of making an exchange or ser
charge for remitting for checks drawn upon them. It was clea
impracticable *in the absence of some legislation penalizing* ba
which would not remit at par to establish a complete clearing
tem over night. *It was therefore determined to begin a progres
campaign of education along the line of least resistance.*

A large majority of the banks in New England have been for
past twenty years remitting to the banks of the Boston Clear
House at par, and it was decided to establish in that district the
complete Federal reserve clearing system. A few banks in Verm
objected, but within a few months they all came into line. The
tem was then extended to the New York district. In a part of t
district the opposition was more determined and *it was necessary
a while to make collections on some of the banks through exp
companies.* Then the system was extended to the Philadelphia
trict, and afterward to the Chicago, Cleveland, Kansas City and D
las districts, as well as to certain States in other districts.

It was deemed wise not to force matters by making collecti
through the express companies or other agencies *until* the non-me
ber banks had had the whole situation fully explained to them a
were given an opportunity of agreeing to make remittances at p
Then when a majority of the banks in a Federal reserve district h

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agreed *arrangements were made to collect on non-assenting banks means of agencies, announcement then being made that the system was operative throughout the entire district or in particular tes in a district.*

There is pronounced opposition in Minnesota, and the Federal Reve Bank of Minneapolis does not feel that the time is opportune the announcement of a complete clearing system in its district. rthern Wisconsin is in the Minneapolis district and southern Wisnsin in the Chicago district; hence the apparent inconsistency reed to by the Commissioner. Northern Louisiana is in the Dallas trict and southern Louisiana in the Atlanta district. The Dallas nk has perfected its clearing system while the Atlanta bank has t. In the Atlanta district, which embraces parts of Tennessee and ssissippi and all of Alabama, Georgia and Florida, there is very eat opposition to the Federal reserve clearing system on the part State banks. This opposition exists also in North and South Carona, which are in the Richmond district. It is not so pronounced the State of Virginia, and the Federal Reserve Bank of Richmond s announced that the clearing system is in effect as of April 1 roughout the State of Virginia, but it is not yet in effect in the rolinas, *except as to member and assenting banks.*

I enclose herewith copy of a law which has recently been enacted the Legislature of Mississippi, from which you will see that banks that State are required to pay checks, by whomsoever presented, hich come through another bank at the rate of $99.90 per $100. view of this law it is impossible for the Federal reserve bank *to force* the will of Congress in the State of Mississippi. In Georgia number of non-member banks instituted proceedings against the ederal reserve bank and secured a temporary injunction restraining e bank from collecting checks by making presentation through an gent for payment over the counter, and as under the terms of the Hardwick Amendment" the Federal reserve bank cannot pay exange to the banks upon which checks are drawn, *it has no recourse cept to decline to take such checks at all.* In Alabama, where the ederal reserve bank attempted to appoint agents to collect checks, found in many cases that it was *impossible to get anyone to accept e agency,* and in one case where a reputable merchant was induced accept the agency he gave it up after a few days because *the local anks had convinced him that his business would suffer* if he continued to act for the Federal reserve bank.

The Board is doing everything in its power to have the clearing stem apply equally to all sections and to all banks. Including ember banks there are about thirty thousand banks in the United ates and twenty-seven thousand of them are now remitting at par. he three thousand which decline to remit are making a determined ffort to defeat the purposes of the Federal Reserve Act with respect a country-wide check clearing system, and *unless Congress should e willing to enact some law making it decidedly to the interest of ank to remit at par,* just as in 1865, *by the exercise of its taxing ower,* Congress made it to the interest of the State banks to retire heir State bank notes, *it is difficult to see how it is possible to accel-*

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erate the present rate of progress in the development of a comp nation-wide check clearing system through the Federal Re Banks.

In the foregoing I have endeavored to show (1) that there is longer a basic cost to the banks of the country in making dom exchanges, (2) that Congress has forbidden both member and n member banks to make exchange or service charges against the F eral reserve banks, and (3) that the Attorney General of the Un States has held that Federal reserve banks are not permitted to p such charges.

I may add that the Federal reserve banks give non-member ba which agre to remit at par the option of paying by check on s convenient banking center or by shipment of currency at the expe of the Federal reserve bank. Stamped envelopes are always sen non-member bank for use in making remittances. Non-mem banks are not asked to perform any collection service; they a merely asked to waive personal presentation of checks drawn u themselves by their own depositors and to pay them through t mails without making any charge, and the law appears clearly to d rect them to do this.

Some of the banks, member banks as well as non-members, a asking their depositors to use a check which has imprinted upon face some restrictive clause, such as "Payable only in exchange current rates," or "Not payable in cash if presented for account o Federal Reserve bank." I enclose for your further informat forms of notices which are being used by manufacturers and jobb in various centers in returning checks to their customers which c not be collected through a Federal Reserve Bank, and also copy o letter which I am informed a well-known shoe manufacturing co cern is sending to its customers.

The legal proceedings against the Federal Reserve Bank of A lanta, to which reference is made above, were brought in a St court. The case was transferred to a Federal court and was hea on its merits a few days ago, but up to this time no decision has be handed down. In any event, an appeal will probably be taken to higher court—possibly to the Supreme Court of the United States and *it is probable that several months will elapse* before *a compl clearing system can be established* in the Atlanta district.

Very truly yours,

(Signed) W. P. G. HARDING,
Governor.

April 9, 1920.

MR. I. W. ARNOLD, Cashier,
Merchants & Farmers B k,
Davisboro, Georgia.

DEAR SIR:

Receipt is acknowledged of yours April 8th, giving notice, in a cordance with your agreement, that after 30 days from this da have elapsed, you desire to discontinue remitting at par for check drawn upon you. We are, of course, willing to live up to our agre

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ent to permit you to cancel the arrangement on 30 days' notice, t will ask that you extend that time until May 15th, which would e 36 days. Our reason for asking this is that the next issue of our r list will not go to press until May 1st, and it is usually about teen days before it is distributed throughout the United States (Tr., 128).

(Tr., 129.)

FEDERAL RESERVE BOARD

WASHINGTON

April 12, 1920.

DEAR CONGRESSMAN:

The situation regarding the Federal Reserve clearing system can e summed up in a very few words. There are certain clauses in ections 13 and 16 of the Federal Reserve Act which seem to require he Federal Reserve Board to establish a system for the clearing by he Federal Reserve Banks of all checks payable upon presentation ithin their respective districts regardless of whether the checks are rawn upon member or non-member banks. * * * The Federal eserve Banks therefore have called the attention of non-member anks to these provisions of law and have stated that stamped enelopes will be sent in each case to the remitting bank in order that here may be no actual expense incurred by the payer bank in making the remittance and that if it is more convenient remittance may e made in currency at the expense of the Federal Reserve Bank. *All non-member banks have been advised that if they do not care to remit to the Federal Reserve Banks at par, collection will be made through some outside agency by having the checks presented at the bank counters for payment.*

If this is coercion as contended by your constituent it is unavoidable, for regardless of the question as to whether Congress has the ight to legislate in any way that results in the diminution of the profits of State banks, it clearly has the power to legislate in matters elating to the manner in which the Federal Reserve Banks shall operate. The Board's view therefore is that *Congress* (1) *has directed* all banks, non-members as well as members, not to make exchange charges against Federal Reserve Banks, (2) *has directed* the Federal Reserve Banks *to receive on deposit* at par any checks and drafts which are payable on presentation, and (3) *has directed* the Federal Reserve Banks not to pay any exchange charges to banks in making these collections.

Whether Congress has the constitutional right to enact a law prohibiting a Federal Reserve Bank from paying exchange to a nonmember bank on checks drawn upon the non-member bank by its own depositors may be argued to be a question of law which should be determined ultimately by the courts. If it is desired to test the constitutionality of the law, it appears that the banks which question its validity should initiate proceedings rather than the Federal Re-

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serve Board. If, on the other hand, they should concede that C
gress has the right to legislate in the manner it has done but bel
that the law is oppressive, unjust or unwise, it would appear t
they should appeal to Congress with the view of having the objecti
able features of the Act stricken out or modified. Here again
would seem that the initiative should be taken by the banks wh
feel themselves aggrieved in the matter. If these banks, althou
entertaining doubts as to the validity of the law, should feel that
cause of the length of time necessarily involved in obtaining a
dicial and final interpretation it is undesirable to litigate, then a
it would seem that recourse should be had to the more direct met
of appealing to Congress. In that case, however, it would seem t
the banks would put themselves in a more consistent attitude if t
would not attempt to obstruct the operation of the law as it
stands pending a final determination of policy by Congress.

The Board holds the further view, however, that if non-mem
banks be no longer required to remit at par, member banks
should be relieved from such an obligation, for the member ba
are supporting the Federal Reserve System and it would be unfa
deprive them of opportunities for profit which are given to non-me
bers. This, of course, raises a question as to the conflict of the
terest of the business community and the general public on the
hand, and the banks on the other. If you should be interested
further consideration of this phase of the matter, I would sug
that you read the enclosure, which is a copy of a letter which
Board sent a few days ago to a United States Senator in answe
some inquiries made by one of his constituents.

Very truly yours,

W. P. G. Harding,
Governor.

Enclosure.

Federal Reserve Board

WASHINGTON

May 7, 1920.

Check Clearings and Collections.

Subject: Letter to House Committee on Banking and Currency R
ative to Par Clearing Controversy.

Dear Sir:

There is enclosed herewith copy of a letter which the Board
dressed on May 5th to the Chairman of the Banking and Curre
Committee of the House of Representatives, from which you will
that the Board takes the position that Congress should settle defini
and finally the controversy regarding par remittances for checks.

The Board has not been advised as to whether the Banking a
Currency Committee will adopt the suggestion contained in its le
that the Committee give all interested parties a hearing, but in
event the Committee decides to do so, wide publicity will be gi

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In order that all who desire to be heard may have an opportunity to express their views. It is the Board's view that the Federal Reserve Banks should not participate in the hearing unless the Committee should request the attendance of their representatives. In case the Committee should fix a date for a hearing, Federal Reserve Banks should take steps to inform their member banks and the public.

Very truly yours,

——— ———,
Governor.

(Tr., 131.)

Enclosure.

To Chairmen of all F. R. Banks.

May 5, 1920.

MY DEAR MR. CHAIRMAN:

The Federal Reserve Board desires to invite the attention of your Committee to Senate Document 184, which contains the Board's reply to a Resolution of the Senate of the United States dated January 19, 1920, requesting that the Federal Reserve Board "inform the Senate whether the Board or any Federal Reserve Bank, under instructions or with the consent or knowledge of said Board, has resorted to any method of coercion to compel State banks to join the Federal Reserve System, or by threats or other coercive means has attempted to require such State Banks to submit to any rules or regulations made by the Federal Reserve Board or any Federal Reserve Bank."

This response explains at considerable length the position that has been taken by the Federal Reserve Board and the various Federal Reserve Banks in the matter of the country-wide clearing of checks. In this communication reference is made to the provisions of Sections 13 and 16 of the Federal Reserve Act and to the opinion of the Attorney General of the United States as to the intent of these sections. The Board believes that it is charged with the duty and responsibility of *inaugurating a complete check clearing system throughout the United States,* that the Federal Reserve Banks in compliance with the evident purpose of the law and in fairness to all their member banks must exercise their power to receive for collection from those member banks checks upon whomsoever drawn which are payable upon presentation, and the so-called "Hardwick Amendment" to Section 13 authorizes both member and non-member banks to make "reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection of payment of checks and drafts and remission therefor by exchange or otherwise; *but no such charges shall be made against the Federal Reserve Banks.*"

In view of the opinion of the Attorney General, the Federal Reserve Banks do not feel authorized to pay any charges to banks for remitting for checks drawn upon them and sent for collection by the

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Federal Reserve Banks. While banks are still authorized to charge each other for such service, they are prohibited from charging the Federal Reserve Banks, which are required to receive from member banks at par all checks which are payable upon presentation. The it happens that the Federal Reserve Banks find themselves in possession of checks drawn upon non-member banks which they cannot send by mail to the banks upon which they are drawn for the reason that those banks decline to remit at par, and it becomes necessary therefore, as the law does not provide any penalty upon non-member banks for refusing to remit at par, for the Federal Reserve Banks to provide themselves with some other means of collecting checks drawn upon such non-assenting banks.

The Federal Reserve Banks give non-member banks which agree to remit at par the option of paying by check on some convenient banking center or by shipment of currency at the expense of the Federal Reserve Bank. Stamped envelopes are always sent a non-member bank for use in making remittances. Non-member banks are not asked to perform any collection service; they are merely asked to waive personal presentation of checks drawn upon themselves by their own depositors and to pay them by mail remittances without making any charge. In the event that those non-member banks do not agree to remit through the mails at par for checks forwarded to them by the Federal Reserve Banks, the Federal Reserve Banks are obliged, as previously stated, to effect the collection of those checks by the only other means possible, that is, presentation over the counter. The legal right to collect checks in this manner cannot be disputed since it is a right which is inherent in the check itself and which may be exercised by any holder thereof whether an individual, firm or corporation.

There is unquestionably, however, *a wide and deep-seated opposition* on the part of non-member banks in various sections of the country, and on the part of some member banks as well, to the universal clearing system which the Federal Reserve Board has been endeavoring to establish. Legal proceedings were instituted several weeks ago in the Sixth Federal Reserve District and an injunction was granted restraining the Federal Reserve Bank from collecting checks drawn upon non-member banks through the express companies or by having presentation made by a local agent other than a bank. The United States District Judge has decided this case on all points in favor of the Federal Reserve Bank, but an appeal will be taken to the United States Circuit Court of Appeals and eventually, no doubt, to the Supreme Court of the United States. Pending the appeal the United States District Court will be asked to grant a supersedeas, which if granted will keep in effect the terms of the original injunction.

The Board would respectfully represent to your Committee that it is important, if possible, to have the attitude of Congress toward the Federal Reserve par collection system made clear beyond any possible doubt, and it therefore requests that your Committee give all interested parties a hearing, both those who are opposed to the present system and those who favor its continuation and completion

and that after a hearing your Committee adopt one of two definite courses: (1) that it report a bill authorizing both member and non-member banks to make charges against the Federal Reserve Bank as well as against each other for remitting for checks, not to exceed ten cents per one hundred dollars, with the provision that Federal Reserve Banks be authorized to charge to sending banks any exchange charges paid in collecting checks for them, or (2) that it report *a bill clearly and definitely establishing the universality of the par remittance system by imposing such conditions or penalties* as will insure compliance with the law by all banks of deposit, *non-member State banks and private bankers* as well as member banks.

The Federal Reserve Board suggests the second alternative only for the reason that it has been contended that the present enactment leaves open some doubt as to the duty of the Federal Reserve Banks to receive checks drawn on non-member banks which are not willing to remit at par, and because it is convinced that a large number of non-member banks will never be reconciled to par remittance as long as Section 13 of the Act remains in its present form (Tr., 133).

Extracts from Letters of Executive Officers of Defendant Reserve Bank Respecting the Campaign for Universal Par Clearance.

(Dates and addresses can be found by reference to the complete letters found in the transcript at the pages indicated.)

In order that you and all other member banks may derive greater benefits from the clearing and collection facilities afforded by the Federal Reserve System, *all the Federal Reserve Banks are extending every effort to obtain additions to our par list.*

Since January 1st, 1919, a total of 1,270 banks have been added to the par list, but there are still a large number of solvent banks whose names do not appear thereon, and we, in co-operation with the other Federal Reserve Banks are continuing our efforts to the end that the number of banks on the par list shall be further increased, and that in the course of time there will be brought into existence a national par list.

You can help us to add at least one name to the par list by authorizing us to send to you for collection and remittance or credit, at par, items drawn on the Bank of Cartersville, who for reasons of their own have so far declined to remit at par for items drawn upon them. By doing this, you will be contributing to the enlargement of the par collection facilities of the Federal Reserve System, and at the same time, *derive the benefits accruing to the handling of checks drawn upon your neighbor* (Tr., 68).

* * * * * * *

We are again approaching you on the subject of your remitting at par for items drawn upon you that we may send to you for collection and remittance.

The twelve Federal Reserve Banks are uniting in their efforts to bring about the establishment of a national par list, and rapid strides are now being made in that direction (Tr., 69).

* * * * * * *

On July 12, we wrote you asking your co-operation in bringing about a national par list, by remitting to us at par for items drawn upon your good bank, to which we do not appear to have received reply.

Since our last letter, more than 500 banks, by permitting their names to be added to the Federal Reserve System par list, have joined with the 20,000 other institutions that were already on the par list in recognizing the par remittance of checks drawn upon them is an essential to the complete service that is due to their depositors.

To give the checks of your customers the same standing in the commercial world as the checks drawn on banks that are on our par list, it is to your interest that you agree to remit at par, and we trust you will advise us accordingly, so that the name of your institution may appear in the next issue, which will be printed shortly.

NOTE.—Form letter (Tr., 69).

* * * * * * *

On several occasions we have written you, requesting your co-operation in bringing about a national par list, by agreeing to remit to us at par for items drawn upon you, but so far you have not indicated your desire to perform this SERVICE for your depositors.

There are now 21,882 banks in the United States that are remitting at par, thus giving a SERVICE to their depositors to which they are justly entitled. There are 17 States in the United States whose banks (members and non-members of the Federal Reserve System) are giving this SERVICE. In Tennessee there is a total of 540 banks of which 276 are giving the same high type of SERVICE TO their depositors. This means that checks drawn by the depositors of 276 banks in Tennessee are more readily acceptable in the channels of commerce and industry than are the checks drawn upon you by your depositors (Tr., 72).

* * * * * * *

Receipt is acknowledged of yours of Dec. 6th, advising that after Dec. 31, 1919, you will discontinue handling for us at par items drawn upon your bank. We very much regret this action on your part coming, as it does, when all the Federal Reserve Banks are daily adding to the list of banks remitting at par; their efforts having reached the point where there are only about 5,000 banks of the 30,000 in the United States that are not so remitting. The day is not very far distant when the remaining banks will realize the necessity of giving this high type of service to their depositors, and we trust, upon further consideration, you will agree to remain on our par list and remit at par for such items as we may send you.

In event you do not feel that you can continue to do so, we will k that you extend the time that you will remit at par until Jan. , 1920. Our par list is printed around the fifth of the month, d it usually takes ten days for its distribution throughout the nited States; therefore, we could not bring to the attention of the rious banks the removal of your name from this list until that me (Tr., 73).

* * * * * * *

Under date of November 20th, you advised that you would take p with your directors, at their next meting in December, the ques- on of remitting to us at par for items drawn upon you, and not hav- g heard from you further, we write to inquire their decision.

In order that you may visualize the progress that has been made y all the Federal Reserve Banks towards the establishment of a na- onal par list, we enclose a map of the United States, which shows at but 5,109 were not remitting at par on December 1st. The tal number of banks on our par list as of that date, was 25,151 nd you will note from the map that 25 States were entirely par, and 0 nearly par. We are now making an organized effort to induce he remaining non-par banks to agree to remit at par, and trust that our bank will be one of the first to do so (Tr., 79).

* * * * * * *

Receipt is acknowledged of yours December 27th, advising that ou have taken under consideration the question of remitting at par or items drawn upon you, and *we trust you will reach a favorable ecision, as we would dislike very much to be compelled to adopt ther means of collection, which would prove expensive and annoy- ng to everyone concerned* (Tr., 80).

* * * * * * *

Receipt is acknowledged of yours of December 27th, advising that ur letter of December 24th, with respect to par remittance, will be ubmitted to your Directors at their next meeting January 7th, and hat you will advise us of their decision.

We very much hope that they will decide favorably, as *we would egret to find it necessary to adopt other means of collection that ould, no doubt, prove expensive and annoying to all concerned* (Tr., 81).

* * * * * * *

We note your comment with the respect to your construction of he last three lines of the second paragraph of our recent letter. In eply would state that since the establishment of the Federal Reserve System, *we have endeavored by persuasive methods to obtain the greement of all non-member banks in our district to remit at par. The majority have not seen fit to comply.* In the past we have per-

mitted larger national questions to curtail our efforts to obtain vo
tary action on the part of non-member banks, *but we feel that*
time has now come when we are duty bound to carry out the p
visions of the Federal Reserve Act as they relate to the handlin
items that we may receive on deposit (Tr., 83).

* * * * * * *

As officers of the Federal Reserve Bank we must carry out the p
visions of the Federal Reserve Act, and as the par collection of ch
is one of the provisions of that Act, *we will be compelled to e*
means of collection that will no doubt prove expensive and annoy
to all concerned in connection with those banks who do not vo
tarily agree to remit at par (Tr., 84).

* * * * * * *

We trust that upon further consideration of the matter you w
agree to remit at par as we would dislike very much to be compel
to adopt other means of collection, which would, no doubt, pr
expenisve and annoying to you (Tr., 86).

* * * * * * *

However, as stated, *the par handling of checks is a function p*
scribed by the Federal Reserve Act and we must provide facilities
matter how expensive.

We trust you will further consider the matter, as *we would dis*
very much to have to adopt means of collection which would pr
annoying to yourselves and customers, as well as an item of expe
to you in shipping currency to pay your checks, which would
presented at your counter for payment in cash.

As a matter of information, you will no doubt be interested
know that 1,154 non-member banks were added to our par list d
ing the month of December, which leaves only 4,000 banks in t
United States that are not remitting at par (Tr., 87).

* * * * * * *

Replying to your letter of December 30, wherein you refer to M
De Saussure and myself as trying to force the plan of par clearin
ovêr our country bank friends—I suppose Mr. De Saussure feels
I do, that what we are doing *is simply in our line of duty.*

I have owned country banks, and having been a country banke
myself, of course, I have a kindly feeling to all those engaged
country banking business. I did all in my power, in a reasonab
way, to promote their interest in this matter, but the question h
now been settled by Congress, and there is nothing left to do but ob
the plain mandates of the law.

The country banker had his hearing before Congress and w
backed by a Committee of the American Bankers' Association, an
the Hardwick amendment represented the ideas and wishes of th
country banker. The whole question was fought out on the flo

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Congress, and the country bankers lost— *now they must abide by the result* (Tr., 88).

* * * * * * *

As stated in our previous letter, we recognize our duty to comply with the provisions of the Federal Reserve Act, and it is our purpose to collect at par items drawn on those banks which are not now so remitting; *first giving such banks the opportunity to voluntarily agree to remit at par, and if unsuccessful adopt other means of collection.* Therefore, in our opinion, *it will not be very long* before we will be able to handle everything at par, and, in the meantime, as outlined in our letter of the 24th, you could open with us a non-member bank clearing account and send to us for credit items drawn on any of the banks shown in our par list. These items would be credited to a deferred account, and, in accordance with our time schedule, transferred to a collected funds account. The balances in the latter account could be used by you in payment of items drawn upon you, and any excess balances would be transferred for you without cost, except when the transfer was made by telegraph, the actual cost of the message would be charged. Our only requirement in connection with such an account would be that you maintain a sufficient balance in the collected funds account to offset the average amount of items that we would send to you, and which are in transit.

Please give the matter further consideration, and advise if you cannot remit at par for items drawn upon you.

When writing you on the 24th, we also addressed a similar letter to the Roanoke Banking Company, to which we have not received reply, and in event they do not answer favorably, it occurs to us that possibly you might be interested in handling also for us at par items drawn upon them. By so doing, you would not doubt be in control of the clearings in your city, *besides having information with respect to depositors of your neighbor that is obtainable through the handling of their checks.* This, of course, is predicated upon their declining to remit at par. *In event we are unable to arrange for this par remittance,* we will, much as we dislike to do so, be compelled to *adopt other means of collection that would prove expensive and annoying to all concerned* (Tr., 89).

* * * * * * *

We trust that your Board of Directors, at its next meeting, will not find it advisable to rescind their action in permitting you to remit at par for, as stated in our previous letter, *the time has now come* when we must begin full par collection *as soon as possible,* and *where present non-par remitting banks cannot be prevailed upon to perform that function, we will be compelled,* much as we dislike it, *to adopt other means of collection that would prove costly and annoying to all concerned* (Tr., 92).

* * * * * * *

To carry out the provisions of the Federal Reserve Act we will be compelled, *if you do not agree to remit at par, to present your items*

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at your counter for payment in cash, which would no doubt p expensive to you, as you would necessarily have to be contin shipping in currency to meet those demands. This method w also, no doubt, prove annoying to you and to your custo (Tr., 92).

* * * * * * *

A letter similar to the one addressed to you on December 26th also written to the Hawkins County Bank, your city, to which have not received reply. It occurs to us that, in event they do agree to remit, you might be interested in handling for us at items drawn on that bank. This would probably give you contr the clearings in your city, as well as *permit you to derive the ben that accrue through the handling of items drawn upon a compet bank* (Tr., 95).

* * * * * * *

A letter similar to the one sent you was also addressed to the M chants & Farmers Bank of your city on December 24th, to wh we have not received reply. It occurs to us that in event they do make a favorable response, you might be interested in handling us at par items drawn upon that bank. By doing so, you w most likely obtain the control of the local clearings, *in addition to benefits that accrue by reason of seeing the checks of the depos of a competitor bank.* In event your neighbor does not agre remit at par, and you also do not wish to handle the items for *we will, of course, have to adopt other means of collecting the che much as we would dislike to do so, as it would no doubt proc noying to all concerned* (Tr., 96).

* * * * * * *

I regret that many of the State banks, not members of the F eral Reserve System, are taking the stand against us in this c paign that we are inaugurating (Tr., 98).

* * * * * * *

We trust you will give the matter further consideration, a would dislike very much to cause you the annoyance that would incurred should we find it necessary to arbitrarily place your n on our par list, and arrange to present your items for payment cash (Tr., 103).

* * * * * * *

Receipt is acknowledged of yours January 15th, in which you st that your recent agreement to remit at par did not contemplate th you would do so for the general run of items. As your letter January 1st made no qualifications, we assumed that you would mit for all items, *and accordingly included the name of your ba*

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our par list, since which time we have been receiving items drawn on you that have been sent you by our New Orleans Branch for mittance. It is now impossible to remove your name from that , and *if you will not continue to remit at par, we will*, of course, e to *adopt other means of collection*. We would prefer, however, t you have the opportunity of remitting at par, and, before adopting other methods, will be pleased to hear from you further (Tr., 05).

* * * * * * *

Receipt is acknowledged of yours January 15th, advising that you l remit to us at par for items drawn upon you. *We will* accordly *include the name of our good bank in* the next issue of *our par , and as soon as the items begin coming to us*, they will be forarded to you by our New Orleans Branch for remittance to it in New Orleans or New York exchange, or, when more convenient, in currency at our expense, to be shipped as outlined in our letter of December 24th. The New Orleans Branch will be pleased to furnish u, upon request, with necessary forms for declaring insurance on pments by registered mail.

A letter similar to the one addressed to you on December 24th was o sent to the Ocean Springs State Bank, of your city, to which we e not received reply. It occurs to us that in event they do not gree to remit at par, you would be interested in handling for us at par items drawn upon them. This would probably give you control of the clearings of your city, *as well as the benefit of the information that may be derived through the handling of checks drawn upon a competitor bank*. Of course if they do not agree to remit at par, and you also do not handle the items, *we will have to adopt other means of collection* (Tr., 106).

* * * * * * *

Your letter states that you will remit for all items on Dade City, Florida, and we assume that this means you will handle for us at par items on the Bank of Pasco County, your city. *If this is the case*, please advise us and *we will include the name of that bank in our par list*, and the Jacksonville Branch will also send their items to you. This will probably give you control of the clearings on your city, *as well as information that is obtainable through the handling of checks drawn on a competitor bank* (Tr., 108).

* * * * * * *

The Attorney General of the United States, to whom the matter was submitted for opinion, has stated that the clear intent of the paragraph quoted is that no charges for exchange for the remission of checks and drafts, payable upon presentation, shall be made against a Federal Reserve Bank.

We are, therefore, not permitted to pay exchange for the remission of the letter sent you herein, and if you cannot see your way ar to remit in exchange at par (envelope enclosed), or send us

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currency at our expense, in payment, we would ask that you kindly return the items to us at once, *so that we may arrange for their presentation at your counter by an authorized agent, for payment in cash* (Tr., 108).

* * * * * * *

We are, therefore, not permitted to pay exchange for the remittance of the letter sent you herein, and if you cannot see your way clear to remit in exchange at par (envelope enclosed), or send us currency at our expense, in payment, we would ask that you kindly return the items to us at once, *so that we may arrange for their presentation at your counter by an authorized agent, for payment in cash.*

We hope for your favorable action, as we would very much regret to be compelled to adopt other methods of collection (Tr., 110).

* * * * * * *

Receipt is acknowledged of yours February 7th, advising that until further notice, you will remit at par in New York exchange for checks drawn upon your good bank.

We are accordingly instructing our transit department to discontinue *forwarding the items for collection by express*, and to send them direct to you, together with stamped envelope for remittance (Tr., 115).

* * * * * * *

You are no doubt more or less *familiar with the efforts the Federal Reserve Banks are making to establish a national par list.* At the present time upwards of 27,000 banks in the United States are remitting *to the Federal Reserve Banks* at par in payment of items drawn on themselves. A very large percentage of these banks have untarily agreed to do so. In some cases the Federal Reserve Banks have been afforded facilities by non-member banks for collecting items at par drawn on other non-member banks, and, while such arrangement is usually mutually satisfactory, it is only desirable from our standpoint, and undoubtedly from that of the non-member bank, to remit to us direct rather than to have their items presented to them through other non-member banks.

By courtesy of the Peoples Bank of Clearwater we have been enabled to add the name of your good bank to our par list, and have for some months past been effecting the collection of items drawn on you through that bank. We presume that it would be much more to your liking to have the items we receive sent direct to you for remittance to us, and we desire to propose to you that you agree to remit to us at par (Tr., 113).

* * * * * * *

Since your letter was written, we have discontinued handling items drawn on your bank, and have removed your name from our par list. *Our arrangement* for collecting checks drawn on you, *by presenting them for payment in cash* in event you did not see your

ar to remit at par, *have not been perfected.* On account of the ge number of non par remitting banks in the Sixth Federal Reve District, *it is not possible for us to arbitrarily commence collection at par* on all banks at one time, and, therefore, *we have to go about it by setting off certain areas to be taken up at a time.* As oon as we are able to make the necessary arrangements in your city, *we will again place the name of your bank on our par list,* and begin ollecting the items *by presenting them for payment in cash,* unless ou will advise us that you will remit at par, reserving the right to discontinue doing so in event the case now pending in court against us is decided adversely (Tr., 116).

* * * * * * *

We regret very much that you deem it advisable to discontinue remitting at par, and will remove the name of your bank from our par list until we are able to make other arrangements for the collection of the checks, for as you know, we are not permitted under the law to pay exchange. We will ask, however, that you please continue remitting at par until March 15th, *as we are obligated to handle the items until a new issue of our par list* has been distributed throughout the United States. The next issue will go to press about March 1st, but will not receive distribution until about the 15th. We feel sure, therefore, that you will assist us in carrying out our obligation by continuing your agreement to remit at par until we can give, by a new issue of the par list, the reasonable notice to which our depositors are entitled (Tr., 118).

* * * * * * *

We regret that after remitting at par for so long a time, you deem it advisable to discontinue doing so. You are, of course, aware of the fact that announcement was made by us a few months ago that we were going to begin handling for our depositors all checks drawn on banks, whether members or non-members. We invited the non-member banks to remit to us at par, and to open clearing accounts with us, if they desired to do so, *at the same time stating that in event they did not remit at par, we would have to arrange to present their items for payment in cash,* as the law did not permit us to pay exchange. A temporary injunction was obtained by some of the banks, and in order that the courts should receive due respect at our hands, *we for the time being abandoned arrangements for personal presentation of the checks.* You have perhaps noted also that Judge Beverly D. Evans, of the United States District Court, rendered decision about a week ago dismissing the bill for want of equity. This, of course, permits us to go ahead and collect the checks as we see fit, so long as we do it in a lawful manner, and it occurs to us that *you would perhaps prefer to continue remitting at par rather than have the items presented to you for payment in cash,* when we make arrangements along that line (Tr., 128).

* * * * * * *

Extracts from Letters of Non-Member Bankers to Executive Officers of Defendant Respecting the Campaign for Universal Par Clearance.

(Dates and addresses can be found by references to the complete letters found in the transcript at the pages indicated.)

Explanatory Note.

On December 24, 1919, and December 26, 1919, each of the form letters found in Exhibits A and B to the original bill (*ante*, p. 18-20) were sent out by registered mail under one cover by the Federal Reserve Bank of Atlanta to 1,050 non-member banks in the Sixth District. In the letters following, where acknowledgment is made of the receipt of the letters of Dec. 24 or Dec. 26, 1919, the above described letters are referred to.

Yours of December 24th instant, by registered mail, reached us Saturday last. *I have carefully noted the threat involved which is now generally recognized as being "the big stick" which the powers that be have decided to use to compel the clearing of checks at par* (Tr., 83).

* * * * * * *

We believe our charge is fair and that we are entitled to it. While this is true we *are not unmindful of the annoyance and constant vexation that we can, and your letter practically assures us we will,* be subjected to unless we go to a par basis we have decided to say that with the understanding that we be allowed to remit in New Orleans exchange, as we are at present doing, *you may enter us on your par list.*

While *we are now submitting to the demands which compel this action, if we are to escape the threattened penalties,* we beg to say that even under adverse conditions we will not desert our comrades in the service, should there develop a disposition to test the matter of submission, through organized effort, that *this bank will cast its lot with its fellow sufferers* and avail of its constitutional right to withdraw from the agreement now entered into, of allowing our bank to go to the par list of the Federal Reserve Bank of Atlanta (Tr., 84).

* * * * * * *

We would not object to remitting at par for checks deposited with your good bank, if the banks who send these items would return us the same courtesy.

A number of our depositors are in Chattanooga, Tennessee, every week, and sometimes want a check cashed, and *there is not a bank in that city that will cash a check for one of our depositors without*

charging from ten to twenty-five cents exchange on checks drawn on our bank, and these same banks will send all items drawn on Soddy Banking Company to you for collection, for which we will remit at par, *while they will charge me or my depositors exchange every chance they get* (Tr., 85).

* * * * * * *

We have your registered letter of the 24th instant, regarding our remitting to you at par for our checks which may come into your hands, and which you say you are willing to handle after we signify our willingness to comply with your wishes.

The question of exchange is one which will not be settled until it is settled right, and our humble opinion is that it is not being brought to a fair or equable conclusion *through the coercive methods which the Federal Reserve Boards are forcing upon both member and non-member banks.*

As we see the Act, it was never intended to inflict any such hardship on the small banks, which by virtue of the Act cannot become a member, and neither is it our opinion that the Act ever intended to make a big, money-making proposition out of the Federal Reserve Banks.

We believe that the Act as now being enforced, does very materially interfere with the vested rights of the non-members of this country, and in view of the unprecedented profits of the Federal Reserve Bank, and the unfair distribution of these earnings among the stockholders, we feel that we are justified in declining to subscribe to any plan which will further enhance the earning capacity of the Reserve Bank, *especially when it is at the expense of us little fellows as well as your own members.*

We would respectfully refer you to Mr. Andrew Pondrom's letter in connection with the Houston Branch. He expresses our sentiment even better than we can (Tr., 86).

* * * * * * *

Replying to your circular letter of December 26th in regard to listing the Citizens' Bank of Rogersville as a par bank to the Federal Reserve Bank of Atlanta, Ga., for the collection of checks drawn against our banks, *we have decided to accept the proposition as defined in your letter and to open with you a non-member clearing account* for the period of one year, and if we find that this arrangement is satisfactory of course we will be glad to continue the arrangement indefinitely.

If we understand your proposition, this bank will be permitted to carry a clearing account with you, you to collect all checks on par points without charge to us, and at the expiration of a specified time, say, three to five days, you will credit our account and allow us to draw against you in payment of items sent us by you for collection on this bank—items meaning checks or cash items. If we understand it, we are not supposed to collect notes, sight drafts, etc., under this arrangement except that we make a charge of $1 per thousand

for the service of collecting notes, sight drafts and purely collecti items.

We also understand further that we are not to be paid any intere on any realized balance that we maintain with you (Tr., 94).

* * * * * * *

We are very sorry to receive yours of the 26th. It sounds ve undemocratic, but *as your office threatened something of this kin for the past year or two*, we are not much surprised to receive th letter, but we still believe in our rights of pay for service rendere and will continue to charge for this service as long as we can.

We are very sorry such good friends as yourself and Mr. De Sau sure are now engaged in trying to force this idea over your count bank friends.

P. S.—Please be as reasonable with us as you can. *Exchan means much to us, and our charges are not excessive* (Tr., 87).

* * * * * * *

In answer to your letter of December 26th, asking us to signi our willingness to remit you at par will say, *as we see it we will compelled to comply to request. While we feel this will be a gre injustice to the country banks* from the fact that it will cause them lose considerable revenue from exchange.

Speaking for ourselves, it is liable to be *a detriment* to us to th amount *of from* $600 *to* $700 *a year.*

In your letter you state that in order for us to obviate this could readily charge exchange on foreign checks we cash throu the window. We cannot do this from the fact that *our deposit are made up largely of farmers*, and if we should attempt such thing as this, we believe that *many of them would discontinue positing their checks in our bank.*

It has never been a custom here to charge our depositors for co lecting foreign checks, and we believe this would have *a tendency very materially affect deposits in country banks*, but as we stated the outset, *we see no other remedy but that you should place us your par list* (Tr., 93).

* * * * * * *

We duly received your circular letter of December 24th with whi you enclosed copy of a letter from Mr. Harding to some other ban

Since it seems we are going to have to forfeit our exchange bu ness, I guess there is nothing to do but what we are compelled to that is, remit you without charge, but I hope that it is possible th we may have some rights as to charges to other people (Tr., 95).

* * * * * * *

Your letter of Dec. 24th, asking us to agree to remit you at par f checks on us, was duly received, but due to the unusual amount clerical work incident to the close of the year we were unable to re sooner.

We have decided to do as you request and remit you at par for all your checks on us altho it will mean a very considerable reduction in our income (Tr., 97).

* * * * * * *

At a Meeting of our Board of Directors held on yesterday, I was instructed to advise you that beginning immediately we will remit you for cash items drawn on this institution at par *but we reserve the right to terminate this agreement at any time without notice to you.*

For your own information, I might add further that we had a Meeting of our Stockholders on yesterday. The question of our increasing our capital to $100,000.00 and joining the Federal Reserve System was seriously discussed; in fact, this question was mentioned in our call to our Stockholders and it was one of the foremost questions before this Meeting. *The Stockholders took the attitude that in view of your recent activities it would be best for us to remain out of the System* and voted accordingly (Tr., 98).

* * * * * * *

We get interest on our daily balances, and we should not like to deposit our money where we would not get interest, *and besides we get credit the day the checks are received,* and that is quite a little item in our favor (Tr., 104).

* * * * * * *

You evidently misunderstood our letter in reply to yours of Dec. 24, 1919, concerning par remittances. We told you we were willing to remit at par to you as we had been doing, meaning Government checks or checks given to satisfy Government obligations, not all checks. We are remitting to your New Orleans Branch today at par, *but are not willing to do so generally.* We are only a small institution, and *one of our sources of income is exchange, so you will please advise other banks that we are not on the par list* (Tr., 195).

* * * * * * *

Replying to your letter of the 10th. We are remitting for your letter of $543.58 less 1/10 of 1% exchange. We are willing to make remittances for items on us at this rate, giving you exchange on Jacksonville, Fla.

We are not willing to clear at par and it is not our intention to do so until such time as par remittances are made by all banks in Florida, which will call for a general readjustment of country banking. The only remuneration that we receive on certain of the business that we handle is the small exchange, that we get. *And our customers know this as well as we do, and they stand with us on the matter* (Tr., 109).

* * * * * * *

Some months ago during a time when the Quincy State Bank of this city were handling your cash letters at par, you advised us that they had decided to sever this arrangement about 15 days before you issued a new par list and invited us to make you a rate for handling items on them during this interval.

We understand that quite recently the local express office are handling these items. As we have heard it, the local office ships the money to you and that a special representative of the Express Company comes here at intervals to collect for the checks.

We presume the present arrangement is of considerable expense and in view of this if we can be of service on the basis of one-tenth of one per cent, the same rate we made in the instance above recited, we will be glad to have you divert your items on the Quincy State Bank to this bank (Tr., 111).

* * * * * * *

We are remitting to you at par item sent us yesterday, but you need not send us any more for par collection as we will return them unless the Government is going to put on a system that will force the Banks to remit at par, and if this be true you won't have to force us, we will promptly comply. I have told you personally and the records of the Federal Reserve Bank will show that we remitted at par a long time, but my neighbor and competitor across the street continued to collect Exchange and the National Banks in this part of the country had written on their checks "Payable in exchange at current rates," thereby allowing the National Banks to continue receiving exchange; after seeing all this I felt that it was unfair to the stockholders of the Holmes County Bank to lose this revenue and we quit. We believe in the par clearance system when all banks are put on the same basis. I feel like Ben Tillman speaking to a Republican Senate on the Tariff Bill, that he was opposed to it, but if they were going to have it anyhow he wanted South Carolina to get her part of the steal, and I think that if other banks are allowed to get exchange that it would not be right for us to lose in this way. I realize the Government has the power to put on the par system and boycott banks that do not confirm. And when you get things in shape for it, give us the day and date and no bluff and we will promptly comply; write us frankly what to depend on (Tr., 112).

* * * * * * *

We prefer to not have our checks sent to us by express and until further notice we will remit you our New York Exchange at par for checks that are good on our bank if you will send them direct to us by mail and send postage. Trusting this will be satisfactory (Tr., 114).

* * * * * * *

By a ruling of the Board of Directors, at a meeting held Feb. 11th, 1920, it was resolved: That on and after Feb. 27th, that the Bowl

State Bank follow the custom of the other banks in the Parish and refuse to remit at par to the Federal Reserve Branch at New Orleans, La., *which is quite an imposition on us, and also a great loss.*

I understand the Bourg State Bank had consented to remit at par, and *a trial has convinced it that it cannot be so accommodating, at a detriment to its own welfare* (Tr., 115).

* * * * * * *

Referring to your recent communication with regard to remitting your Bank at par for items on us, and our reply thereto.

We note that you have adopted the policy of sending these items via Express Co. Of course, we think this policy is wrong but *we are not looking for any fight on this subject,* it isn't worth it, so therefore, we suggest that *in lieu of the Express Co.* you send them on to us and *we will of course remit you flat.* This will end *the fight* as far as we are concerned (Tr., 118).

* * * * * * *

Please be advised that effective March 1st, this Bank will discontinue paring items for the Federal Reserve Bank of Jacksonville, or Atlanta, or in fact any other Federal Reserve Bank.

Our rates on and after March 1st, will be 1/10 of 1% (Tr., 118).

* * * * * * *

In view of the fact that the Mississippi Legislature has seen fit within the past few days to pass certain acts making it mandatory on the State Banks of this State to charge exchange on cash items and further in view of the fact that we are one of the plaintiffs in the suit of the American Bank and Trust Company, *et al.,* of Cordele, Georgia, *vs.* the Federal Reserve Bank of Atlanta, Georgia, we deem it to our best interest to notify you, that beginning March the 15th, we will cease to remit for items drawn on ourselves and presented to us through the Federal Reserve Bank. We will continue to refuse to remit for these items at par until such a time as the validity of the recently enacted law by the Mississippi Legislature is tested and also await the final outcome of the suit of the American Bank and Trust Company *et al. vs.* the Federal Reserve Bank.

In other words, we are not going to continue after March the 15th, to handle items on ourselves, presented to us through the Federal Reserve Bank, at par *until we have to.* As you understand, at the time we agreed to remit for these items we were doing it under protest—*now, we see a good loop hole to escape and we are going to do it* (Tr., 119).

* * * * * * *

At the time *we were forced through coercion* to agree to clear checks for the Federal Reserve Bank at par, we informed you that we would do this subject to the actions of the courts in the case of the Georgia Bankers against the Federal Reserve Bank. We notice

that while this suit is pending you have discontinued trying to collect checks at par on them.

In common with a great many banks in the State of Florida we have asked the Georgia bankers to make us a party to the suit, and in view of the stand that we took when we agreed to clear at par we feel that you should discontinue sending us items till the outcome of the suit is settled.

If we lose the suit we will be forced to clear at par (Tr., 120).

* * * * * * *

We have concluded it would not be fair for us to remit to you at par, while we are charging other banks exchange, and for this reason request that you take us off your par list (Tr., 121).

* * * * * * *

On December 27th, 1919, we indicated our willingness and authorized you to place our name on your list of par banks in this district. We accepted your proposal with the reservations in our mind that we would withdraw our name at the first opportunity, believing that we are just as much entitled to exchange on our checks as the Government is entitled to a fee for transmitting money by post office money order.

The recent enactment by the Legislature of Mississippi of House Bill No. 654, making it a law of this State that banks shall charge exchange at the rate of $1.00 per thousand on checks and cash items not only offers us an opportunity, but makes it mandatory that we advise you of our intention to cancel the agreement we made with you to remit to your bank for all items you sent us drawn on our bank. We believe that it is fair and right that you should have some advance notice of our intention, and we think that eighteen days would be a reasonable notice to you. Therefore, please be advised that we will discontinue remitting to you at par on items drawn on this bank on and after April 1st, 1920 (Tr., 121).

* * * * * * *

Please take notice that as per our agreement with you for clearing items free of exchange, beg to advise that we wish to terminate this agreement as made by us, it being the agreement that within thirty days after notifying you this agreement would be cancelled. We are unable to handle these items at par any longer, and wish to terminate the agreement as stated above (Tr., 127).

* * * * * * *

Pertinent Extracts from Plaintiff's Oral Evidence.

J. W. Cannon.

(Tr., 166.)

Resides at Cordele, Georgia. I am connected with the American Bank & Trust Company of Cordele, Georgia, that is the origina

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plaintiff in this case—the bank from which this case takes its name. Prior to the organization of the American Bank & Trust Company I was connected with the American National Bank of Cordele, Georgia. That was a national bank. The American National Bank liquidated for cash and paid the stockholders $170 on the share and issued new stock for the new bank. The two operations were coincident. In practical effect the American Bank & Trust Company succeeded to the business of the old bank. The question of exchange was the prime motive for changing. We got exchange until the time the Federal Reserve Board put in their ruling on member banks—I believe the Federal Reserve had been in operation about three years at the time we surrendered the charter; we had a national bank charter for eleven years.

The national bank, under the system put in effect by the Federal Reserve system, was bound by the regulations and had to remit cash items at par. *While the name of our bank was on the par list, fully 90 per cent of cash items drawn on our bank and held outside of Cordele came back to the bank for collection through the Federal Reserve bank and its branches. After the change* was made and we became a State bank, our name was not carried on the par list of the Federal Reserve. *Thereafter none of the cash items held outside came for collection through the Federal Reserve banks*, except such items as were payable by the Government, which we remitted at par; that constituted about 1 per cent of our business. *The others came directly through the banks and clearing-houses of various cities.*

MARK W. MONROE.

(Tr., 168.)

Quincy, Florida. President of the Quincy State Bank since 1892. That bank is not a member of the Federal Reserve system. I was approached by the Federal Reserve bank with the request to sign an agreement to remit these items at par. When they first put the threat out that they were going to use the post-office on us, we did not know how big a bear they had in the woods, and we agreed temporarily to clear them at par, until we found out how bad it was, and we discontinued it after a short time. I mean by threat that they would use the Post-Office Department, but when it was determined by the Department that the post-office could not be made the agency for the collection of those items, we discontinued it. I didn't know how bad it would be for all the items to be congested through the post-office, and demand the cash; they might catch us shy sometimes. We had experience later on with them, in 1920. The checks were then presented by the express company through a special agent, who presented the first batch. His name was Hunter—a sort of route agent or auditor. February 12, 1920, was the date. I couldn't tell you exactly how many were there—a stack about that high; a hundred or more; for account of the Federal Reserve Branch at Jacksonville, Fla. The aggregate amount in dollars was twenty-

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seven thousand six hundred sixteen dollars and eighty-six cents. I *think there were upwards of a hundred in one batch.*

The circular letter came out, stating that they would use any means to collect them, and the newspapers had reports that the express company would be used, and we fortified ourselves. We *shipped in currency.* Our ordinary balance of currency required was forty-five or fifty thousand dollars, but we had shipped in currency and had on hand seventy-five thousand dollars or over. On the 13th day of February, 1920, there were two letters presented to the local agent for collection from the Jacksonville Branch of the Federal Reserve bank, one letter containing items totaling $9,793.8[illegible] and one letter containing $8,256.00—*a total of $18,149.95*—making *a total of over $45,000 in two days.* There was a big bunch of them on the 13th, *possibly fifty or sixty checks,* in the two letters. On February 13, 1920, at the close of business, our deposits were $1,23[illegible] 485.85 in the regular course of business. To illustrate how average daily letters came: *On February 14th* the Federal Reserve bank sent a regular collection item, which amounted to $3,461.46—to show you how the items came through the regular channel. On February 16th they had discontinued the use of the express company; *on the 16th* they sent for collection through the mail, like any one else, a letter which contained $926.09, on which we charged 93 cents; on March 10, 1920, the Jacksonville Branch sent an item of $714.6[illegible] the charge was 44 cents; on April 12, 1920, there was an item came in, a cash letter, for $1,278.22; the charge was $1.28; on May 1[illegible] 1920, there was a cash letter for $1,489.40; the charges were $1.5[illegible] Those are what would have come regularly into their hands. Our source of supply of currency is Jacksonville, Fla., one hundred and ninety miles distant. We have two trains daily each way, but the only way we can get money is on the 4:30 train in the afternoon. There is no possibility of increasing our supply of currency after the bank opens in the morning. The train leaves Jacksonville at 4 o'clock in the morning, and if we had the demand made today we could not replace it until tomorrow afternoon. *As the result of our experience just detailed, we had to increase our supply of cash;* we ran up to seventy-five thousand dollars, to where we were ready for them on that, when those larger items came in, you see. On the 11th of February we had cash in the vault, $74,247.47; on the 12th when they dragged us with the big bunch of checks, that left us cash $36,272.72; on the 13th we had left $24,862.67, and on the 16th we had $99,800.68. We had increased our currency by shipping it in and from then on *we succeeded in maintaining it from ninety-nine thousand to a hundred and ten thousand, until the menace had passed.*

When that bunch of one hundred or more checks was presented to our bank the route agent of *the express company asked for payment in cash.* There was no suggestion that we pay him in exchange. We have been mixed up in that kind of rows before and we were fixed for him and never asked any favors at all. *He demanded the cash.* We have to carry our reserves in cash or cash balances and are permitted to carry State, city, or municipal bonds. Our reserve

is 20 per cent of our deposit. The usual amount of currency carried was thirty-five to forty thousand dollars.

My position is no one has any right to require another to work for another at an expense to himself and feed himself. A heavy expense is thrown on a bank to maintain this department. And another feature is the Federal Reserve banks are meddling in a matter that does not concern them.

Whenever you run a bank, and a man brings a check and puts it across your counter, you know he wants money, cash. If he wants anything else he says, I want exchange, or a cashier's check, but until he says that, when he puts it across there, that is an implied demand that he wants the money. *No solvent bank can stop to quibble about things like that; that is understood and that is the reason we fortify ourselves with the cash.*

We get 2 per cent on New York balances; 3 per cent on Atlanta balances; 3 per cent on Savannah balances, and 3 per cent on all balances in Jacksonville except with one bank, and that is 4 per cent. We never send that bank anything in the way of collection items. When we had to increase our cash in bank it diminished the interest earning on about $60,000. It will diminish our lending capacity by the amount we have to carry in cash.

L. P. Pattillo.

(Tr., 137.)

President of Bank of Buford. I am familiar with the so-called par-clearance campaign in this district. I had a conversation with Mr. J. A. McCord before the circular letter of December 23, 1919, was sent out by the Federal Reserve Bank of Atlanta to non-members. In the conversation somebody asked me if I had ever joined the Federal Reserve bank, and I told them I had not. Mr. McCord put his finger out at me that way (indicating, pointing his finger) and said, "You will join."

After that we got the memorable circular letter. *They said it was their purpose to enforce it. That they were going to adopt the plan set out in this circular letter; if they couldn't do it one way the idea was to do it another;* if they couldn't do it by some way, *they would force us.* I think Mr. Wellborn was with us. As a result of that effort to have an understanding with the Federal Reserve bank, we got no satisfaction. They seemed to persist in carrying out the plans; that was their idea. They seemed to be getting ready for it all the time.

Albert M. Tumlin.

(Tr., 154.)

Cave Springs, Ga.: I am president of the Bank of Cave Springs. It is a State bank and now a member of the Federal Reserve system.

I think it was admitted in December, 1919. The matter of joining had been under discussion off and on; I had known Mr. Wellborn for years; I met him at the bankers' meeting and he mentioned it to me and thought it was a good thing. *The main thing that bothered us was par clearance.* I talked with Mr. Wellborn in the summer before I think. Just before we went in we increased the capital stock to twenty-five thousand dollars and twenty-five thousand surplus. The capital prior to that was fifteen thousand dollars and the surplus went on up to about eight or ten thousand.

We knew we would have to increase our stock to become a member and the par clearance question was becoming so pressing that it looked like we had to do something. I had a conversation with Mr. McCord as to the intention and purpose of the Federal Reserve bank just before we joined. Mr. McCord is chairman of the board. I had that conversation in his office in Atlanta. I had been appointed to fight par clearance; I had been appointed one of a committee of seven and I had several banker friends on it, and *it looked like we were going to be forced in from what Mr. McCord said, and what he did. He said they were going to put on the par clearance campaign* and it would be put over and we would have to go to par clearance. *that they were going to force it through, and go to collecting at the counter and I said that would ruin any bank* you know—they could not carry enough money, the Cave Spring Bank or any other bank to do it—*and he said I know it.* He concurred in that statement and said he knew we could not, and I agreed with him. *That is the reason I joined;* that is not all the reasons, but the greatest reason. *our greatest loss was on the question of exchange. Our average revenues from exchange were nine hundred dollars*—about. As to keeping a deposit in the Federal Reserve bank of an amount sufficient to meet all items in float, the greatest trouble is deferred credit. After we went into the Federal Reserve, it was one of our greatest troubles.

Mr. McCord talked very freely, and we both come to the same conclusion about the matter. *He said they were going to put it on; that all the rest of the districts had, or were going to do it; they had the instructions*—I do not know that he said from Washington; it has been two years ago, and I could not say positively what all happened, but we both arrived at the same conclusion—if they put it in, what it was going to do; I had no doubt about it then. Mr. Adams asked me what I joined for, and I said I can't fool with you fellows any longer. I can't serve on the par clearance committee because I have got to clear at par. I do not remember all that was said. I then retired from the committee and all its activities with reference to the campaign of the country banks. I could not join one thing and keep on on the other. *While I thought we ought to have our exchange still I quit, because I thought we had to.* That was on the idea that we took the lesser of two evils you might say; *if we could have kept the exchange I would not have joined;* that is the truth about it.

I became convinced that we could not do anything else; *that they were going to put par clearance over, he said so.* He said that they had it to do as they construed the act; and I think he was trying to do his duty—what he conceived to be his duty. He convinced me

that they would have to do it. *He convinced me* what he was going to do—*that he was going to make them do it—that's all.*

I am a member of the Federal Reserve system, but I do not believe it is right to make a country bank clear at par. I do not care what the law says.

It was all right, as long as the Federal Reserve didn't put the screws on, and say they were going to collect over your counter, or send it by express, we could go ahead and defy them and get our exchange; *but the minute they did that*—these other gentlemen, I talked with them, I was working for what I thought we had to do; *I don't like to be held up and made to do a thing.*

Q. There is nothing to prevent you from requiring your depositors, when they deposit a check—nothing to prevent you from deducting interest on the amount for the three days, or the number of days that check is out?

A. *Yes, sir, there is the greatest reason in the world; anybody knows that a country bank could not consider it.* You men who live in town may be able to do that; but you say to a countryman that he must put up that money, he would be outraged; that I know. A big bank has got their own resources; a big bank could stand it. My bank has seen the time if it hadn't got the exchange it could not have paid one man to stay there and attend to it; take a little bank, with little deposits and it can't do it, and *you talk to a farmer about charging him and he will put his money in his pocket.*

P. R. Kittles.

(Tr., 160.)

I am one of the Class A directors in the Atlanta Federal Reserve Bank; have just finished my fourth year. I remember in 1919, when the directors had several meetings during that year, and then into 1920, and had up for discussion at various times the par-clearance campaign in the Sixth District. In the meeting of December 11, 1919, the subject seems to have been dealt with at some length, and I am quoted as stating that while I was not in favor of par clearance, if it was the law we should proceed to enforce it; that was my position at that time.

We had a map, which was exhibited, showing certain sections clearing at par, and further than that I had no particular information from any one. My general understanding was that practically no effort had been made to clear at par in this district. I was advised that successful efforts had been made in some of the other districts, as shown on this map; but some of those shown had been par for some time; some of them had been for years. Every effort was made to work out some co-operative friendly plan. I suggested that we send to these non-member banks items drawn on them, feel them out and see where they stood—*see what opposition we would have in par clearance before we tried to enforce it.* That is the plan known as the Kittles plan.

I understood that under the law we were compelled to coll these checks and incur any expense to go out and collect the When we finally came to vote on the question we were advised counsel that it was mandatory.

Many of the board took the position—rightfully, I think—th where there were two banks in a country town, one a State ba and one a national bank, and the national member bank had to co ply with this par-clearance regulation, that it was necessary, in or to conserve the interest of the member bank, the man already rem ting at par, to have the non-member do likewise.

Q. Wasn't it suggested to send checks out, and to have them p sented at the counter for payment in cash, and that they could n stand that and would have to come in—in plain English, was not th the purpose?

A. Perhaps that was ultimately contemplated; perhaps it was d cussed.

Q. It was just understood?

A. The Atlanta Clearing-House discussed it, yes. I understo that, I don't know whether the others did or not; my training in t Atlanta Clearing-House did it.

Q. Did not you decide on it as a policy and give these instructi for the purpose of carrying out that policy, *that these checks on no assenting banks would be presented either by a special agent or the express company, and the cash demanded?*

A. *I guess the correct answer to that would be that it was ul mately contemplated.*

According to my country experience, *I contemplated that;* I f that that was what it was; I don't know how they regarded it, bu *felt that that would be the ultimate result.*

E. V. Tidwell.

(Tr., 167.)

I am cashier of the Atlanta Clearing-House. I supervise the c lection of checks on country banks in eight Southern States. T collection agency for the clearing-house is operated by the memb of the Atlanta Clearing-House Association. The privileges of t Collection Bureau in the clearing-house proper is that of a mem of the clearing-house. These checks are delivered to me for c lection twice a day. They have until 11 o'clock in the morning a 3 in the afternoon for deliveries. The average rate of exchan the cost to the collection bureau of handling out-of-town checks, p one thousand, was $1.21 in 1919. That is just the cost of exchan In 1920 it was $1.18.2. In 1921 it was $1.11.9. The banks, t members of the association, pay it, according to the amount th put in. The amount which each bank pays is determined by t amount of checks placed in my hands for collection. The other e pense attached to the collection bureau is overhead expense. Th is apportioned according to the number of items. One is accordi to the face value of the checks and the other according to the nu ber of items.

This cost that I denominate exchange cost is to reimburse the clearing-house for the charge made by the banks on which the checks are drawn. That is the average during the year. We collect that for them and remit it to them; they charge us for checks. I simply reimburse myself that way. The overhead cost in 1920 was 1.2 cents per item; in 1921 it was 1.4 cents per item. If the drawee banks of these checks had charged no exchange these last items would be all the expense of conducting the clearing-house.

As to the clearing-houses about which I testified, in response to questions of counsel on the other side, I thought he had reference to clearing-houses that had a collection bureau. They are the only ones about which I testified.

W. J. Stover.

(Tr., 137.)

Cashier of the bank of Cassville. The amount of revenues from these exchange charges was $332.61 in 1919. The bank ran at a loss of $183.37 that year. The receipts derived from exchange during the next year were $302.74 and the net earnings were $977.84. Revenue from exchange in 1921 was $105.00 and net earnings $201.48.

W. E. Greene, Jr.

(Tr., 140.)

I am cashier of the Farmers & Merchants Bank, Junction City, Georgia. For 1921 our earnings from exchange were $733.23; gross earnings, $6,644.69; expenses, $4,021.40; that is as to the last fiscal year. For the year preceding that, to March 31, 1920, the gross earnings were $7,513; the net earnings, $3,030.95; earnings from exchange were $858.89; expenses were $3,697.78. For the year preceding that, ending March 31, 1919, gross earnings were $5,039.38; expenses were $2,789.38; net earnings, $2,350; exchange $731.05.

E. S. Strickland.

(Tr., 143.)

I am president of the Alma State Bank, Alma, Georgia. Our receipts from exchange during the year 1919 were $543.13; gross earnings for that year, $9,395.82; expenses, $9,049.13. The amount stated as exchange receipts is included in the gross earnings. For 1920 our gross earnings were $9,838.91; the amount of exchange, $595.49; expenses, $7,540.10. The figures, as far as I have them, for 1921, nine months, are: Gross earnings, $11,604.38; exchange, $852.47; expenses, $11,348.58.

W. I. Bennett.

(Tr., 146.)

Cashier of the Bank of Trion, Trion, Georgia. The year 19[illegible] the exchange receipts were $164.37; the expense account w[illegible] $1,162.91; the net earnings were $2,492.89, without a dividend b[illegible] paid.

For the year 1914, interest and discount was $3,566.42; exchan[illegible] was $391.11, less expenses of $1,073.70; the net earnings w[illegible] $2,883.84, without a dividend being paid.

The year 1915 interest and discount were $2,443.21; exchan[illegible] was $301.04, less expenses of $1,252.45; the net earnings w[illegible] $1,491.80.

During the year 1916 interest and discount, $4,306.72; exchan[illegible] was $588.78; less expenses of $2,227.29; the net earnings w[illegible] $2,667.51.

In 1917 interest and discount, $7,428.92; exchange was $837.6[illegible] less expenses of $3,264.55; the net earnings were $5,002.00.

1918, interest and discount, $7,439.09; exchange, $1,520.41, l[illegible] expenses of $4,207.40; less furniture and fixture depreciati[illegible] $117.37; net earnings, $4,634.73.

1919, interest and discount, $10,463.20; exchange, $1,311.50, l[illegible] expenses of $4,847.83; less furniture and fixture depreciati[illegible] $223.00; the net earnings, $6,703.87.

1920, interest and discount, $14,895.68; exchange, $1,521.98, l[illegible] expenses, $6,934.77; less furniture and fixture depreciation, $272[illegible] the net earnings were $9,210.68.

For 1921 interest and discount, $11,684.63; exchange, $1,092.[illegible] less expenses, $8,983.73; less furniture and fixture depreciati[illegible] $249.49; less worthless accounts charged to profit and loss, $209.[illegible] net earnings, $3,135.18.

This makes total earnings for the period of $38,222.50, of wh[illegible] amount $7,729.63 was exchange; or, 20 22/100% of our earnin[illegible] for the nine-year period was exchange.

B. F. Rawles, Jr.

(Tr., 153.)

I am a banker at Colquitt, Ga. The receipts of our bank fr[illegible] exchange during the year 1921 were a little less than $250; I thi[illegible] $242 and a few cents; net earnings, $1,100 and something. I[illegible] ceipts from exchanges during the preceding year, somewhere al[illegible] fifty or sixty dollars.

L. R. Adams.

(Tr., 197.)

I am secretary of the Country Bankers Association of Georgia, ince the organization of the Association.

Q. Mr. Adams, state whether or not before the letter of Decem- er 23, 1919, sent out by the Federal Reserve Bank of Atlanta, was romulgated, you had any information as to the intention of the ederal Reserve bank to inaugurate the campaign for par clearance?

A. I did.

Q. When did you get that information?

A. I had a conversation with Mr. Wellborn in his office.

Q. At whose instance?

A. At Mr. Wellborn's request.

Q. He requested you to call on him?

A. He did.

Q. And you had a conversation with him?

A. Yes, sir, quite extensive.

Q. On that subject?

A. Yes, sir, on that subject.

Q. What was his purpose in conferring with you as to the attitude f the country banks?

A. It seemed that Mr. Wellborn wanted to know what the attitude f the country banks was going to be when the Federal Reserve bank ndertook the enforcement of par clearance in the Sixth District.

Q. He knew your official relation to the country banks of Georgia?

A. Yes, sir.

Q. At the conclusion of that conference, please state in substance hat Mr. Wellborn said to you on that subject?

A. As I rose to leave Mr. Wellborn's office after the conference, hich lasted quite some time, he said, "Adams, according to what ou say we had just as well get ready for a fight."

Q. What was your reply?

A. I said, "yes, that is true, and while you are getting ready we ill get ready."

Abstract of Defendant's Oral Evidence.

L. C. Adelson.

(Tr., 176.)

Atlanta, Ga. I have been deputy governor of the Federal Re- erve Bank of Atlanta since March 1, 1919. Prior to that time I as assistant secretary to the Federal Reserve Board. As deputy overnor, I have general supervision of the operating departments f the bank. *I have had active participation in the so-called par- learance campaign of the Federal Reserve Bank of Atlanta.* It was urned over to me to lay out the plans and submit them to the other

executive officers and the executive committee for their official i termination. I did so. *I had charge of the correspondence on t subject.*

I heard the testimony of Mr. Mark W. Monroe, of Quincy, Fl At no time, under my direction, or, so far as I know, under a body's else direction, were orders given to the express company accumulate checks and present them *en masse* for payment. Th was no design to accumulate them for the purpose of embarrass the Quincy State Bank. That policy has been pursued only in few similar instances, as stated, where several letters had been s down and they did not remit at par, and when they were return to the bank we sent out a man, in order to relieve our liabilit soon as possible; the liability that arises through negligence in h dling checks, and that might be construed by the court, if it co to an issue, by holding these checks a long time—we might be charg able with negligence.

Cross-examination:

Q. Mr. Adelson, you wrote a number of letters late in the y 1919 to the banks throughout the Sixth District, or rather you u istered to these banks a form letter, dated December 23rd or 24th I don't know which date you used—attached to this bill as Exhi B, enclosed in that a letter from Governor Harding, of the Feder Reserve Board, attached as Exhibit A?

rection. I had general supervision of that.

A. Yes, sir; it was sent out by the mail department under my

Q. You sent out more than a thousand of them, did you not?

A. I do not recall offhand the total number.

Q. A very large number; your exhibit shows 1,050. Is that accord with your recollection?

A. I could not state positively; there must have been in th neighborhood. I received various and sundry answers to that lett Some agreed to remit at par. Some said they did not want to rem at par; others did not reply. Those who refused to remit at par wrote follow-up letters specifically in reply to those from whom received a reply to the letter of December 23rd. In a number these letters I stated if they did not reconsider and agree to remit par that it was our purpose to send these checks out for payment currency over their counter; I think I said something like that.

The letter of July 12, 1919, as a form letter was used in connecti with the par-clearance campaign (App., 32).

It was sent to banks at that time not remitting at par. In th letter I stated that the twelve Federal Reserve banks are uniting their efforts to bring about the establishment of a national par l and that rapid strides are being made in that direction. The Fe eral Reserve Bulletin each month shows the number of banks adde to the par list. I kept in touch with it; I kept myself informed that subject. I knew what progress was being made in the oth districts; that was obvious, from the number of banks reported. that time we were not making any progress in this district, th might be termed rapid; on July 12, 1919. At that time *the ca*

sion of the par-clearance banks was one of my duties, and this letter was one of the things I began to do to hasten the progress of the campaign in this district. From what I could see in the Federal Reserve Bulletin—each bank adding a number of banks each month—they were extending their efforts. That is the only par list in the United States; it is printed by all banks; it is printed in Washington, only the central source, where each of the Federal Reserve banks list their additions and withdrawals, and for economy it is sent to the Federal Reserve Board, and each bank is listed with its pro rata of the cost. Information sent by the several banks is accumulated there and printed. It includes the par list of all the banks.

I and my subordinates, or associates, furnished to the Federal Reserve Board at Washington, the information necessary to compile this list and reports every month. When we put a bank's name on that list, that information is distributed to every Federal Reserve bank, and every branch in the United States. *This par list goes to member banks of the respective districts, whether State or National. A State bank that is a clearance member would receive a copy also.* The member banks are charged nothing for the par list; they are furnished them free by the Federal Reserve bank of their district, and as many as they ask for. Barring some slip or failure to ask for it by some bank here and there, *this par list goes into every bank in the United States that is a member, or clearing member of the Federal Reserve system.* That is true also as to the monthly exchange sheets.

Prior to the appearance of a bank's name on this par list, no items drawn on that bank come through the Federal Reserve bank, unless they are payable to the Government, except occasionally an item from the transit department of a commercial bank is misrouted to the Federal Reserve. That would be by mistake.

After a man's name goes on this list, if he is in our territory, we get checks drawn on that bank after the list has had time for circulation; we get a percentage of the checks drawn on that bank that are afloat. I would not say that we get practically all the checks that pass through any member of the clearance system.

The placing of a man's name on this par list that goes all over the United States, *has the effect or tends strongly to have the effect, to converge into the Federal Reserve banks of the district in which any bank happens to be doing business, a percentage of foreign checks.* I could not state, definitely, what percentage; it varies. I never gave any order to the express company to accumulate checks on this bank in Florida. They could accumulate them if they gave them two or three packages of checks; different packages that were held for several days by this bank. It would be an accumulation of several packages after the bank itself had held them. If all the checks I receive in one day are forwarded the same day there is no accumulation. If I sent a runner around town to everybody who deposits in the Atlanta National Bank and had them send their checks to my office, I would not call that an accumulation on the Atlanta National Bank if I presented them the same day. I would merely call it a convergence of checks. I see a difference between concentration and

accumulation. I could not state how many banks' names I ha sent to Washington to be put on this par list that have not giv their consent. I put on a few at one time in January, 1920, rig after that letter went out.

Mr. Tutwiler was sent to Dothan—he had formerly lived there to present these checks for payment; he presented them at t counter of the bank and the cashier immediately paid him cash and at the same time he showed to Mr. Tutwiler a large de covered with old torn one-dollar bills, and told him we have be preparing for this, and we will try to wear you out with that ki of currency.

I don't know the exact number of days he was retained at th place; it was not a great while. The Dothan Bank & Trust Co pany later intervened, and upon receipt of notice that they had i tervened, we stopped him. *The temporary restraining order com me to withdraw him.* He had been there several days. He was se there from the Atlanta office.

The mere fact that a bank's name appears on the par list does n mean that that bank is voluntarily remitting at par; it means it is bank on which we are able to collect. It does not mean necessari that it has agreed to it. It does not mean that we are able to do without expense; it may be that we might have to employ an age or express company and charge as general operating costs. A ban has not voluntarily agreed to remit at par merely because its nam appears on this list; it may be through some other channel.

M. B. Wellborn.

(Tr., 186.)

I am Governor of the Federal Reserve Bank of Atlanta, sin March 1, 1919. I am the chief operator of the bank; charged wi the operating department of the bank; chief executive officer. I a familiar with the so-called par-clearance campaign. I have never any time during my incumbency as governor authorized or direct the accumulation of checks upon a non-member—a non par-remi ting bank and their presentation in mass at the counter of the ban for payment. *As between having to pay all checks in currency o the counter, and having to forego their rights to charge exchang remitting at par is the lesser of the two evils.*

Q. Did I understand you correctly, Mr. Wellborn, that the co clusion you came to and expressed in your answer to the sixth int rogatory was arrived at between the time the bill was filed and t time the interrogatories were answered?

A. Yes, that policy was decided upon some time this past year.

Q. Mr. Wellborn, I want to ask you whether or not, if the Fe eral Reserve bank—if you were a country banker, and the Fede Reserve bank was to take all checks received by it as the result of t drawee bank being on the par list, and send a special messenger the counter of that bank and demand payment in currency o the counter, would you consider that that would be an expensi

embarrassing and annoying process for the drawee bank; or would it be either embarrassing or expensive or annoying, or any two or more of them?

A. I should think it would be to some extent; yes, sir.

Q. What do you mean by some extent?

A. Well, *it would cost them more than they could afford to pay.*

Q. There would still be some expense?

A. Yes, sir.

Q. *And it would be annoying and embarrassing to that bank for a special messenger to walk in with these checks and present them at the counter?*

A. *I should think it would; yes, sir.*

Q. Suppose that one of the plaintiffs in this case was informed that the defendant expected to employ a special agent in the town where the bank was located, to whom there would be mailed daily checks on that bank that came through the Federal Reserve bank, by reason of that bank's name being on the par list, whose instructions were that he should present those checks at the counter of that bank and demand payment in currency; would you, or not, consider that method of collecting checks, if carried out, would prove expensive, embarrassing, annoying, either or both, or all three?

A. *My answer is that I think it would be expensive and be annoying.*

Q. And embarrassing?

A. *And embarrassing.*

One of Mr. Adelson's letters contained the statement: "On account of the large number of non-par remitting banks in the Sixth Federal Reserve District, it is not possible for us to arbitrarily commence collections at par on all the banks at one time, and therefore we have to go about it by setting off certain areas to be taken up at a time. As soon as we are able to make necessary arrangements in your city, we will again place the name of your bank on our par list and begin collecting items by presenting them for payment in cash, unless you will advise us that you will remit at par. Should we find it necessary to arrange to present items at your counter, payment will be demanded in cash only." That is the letter; receiving nothing but cash, regardless of the channel through which it is presented—a continuous performance, with the bank's name on the par list without its consent. *State whether or not that would be an embarrassing, annoying and expensive method of collecting checks on the payee banks.*

A. *Yes, sir; I think so.*

Q. And would be expensive, annoying and embarrassing to the Federal Reserve bank also?

A. Yes, sir.

Q. *Would it not be very much more expensive than the ordinary rate of exchange?*

A. *I think so.*

Q. Would it not be several times more expensive than to send down the checks and pay one-tenth of one per cent?

A. Perhaps so.

Q. Mr. Wellborn, you know Mr. L. R. Adams?
A. I do.
Q. Of Atlanta?
A. Yes, sir.
Q. You know he is the secretary of the Georgia Country Bank Association, and has been since the organization of the association?
A. Yes.
Q. Did not you have an interview with Mr. Adams on this subject of par clearance shortly before the bill was filed—at your office at the Federal Reserve bank, where the whole subject was discussed at length?
A. That interview never occurred with me at all that I can recall; it never come to my mind. That committee of the Country Bankers Association, called on me after the meeting of our directors authorizing us to put in this par clearance system; it was after the meeting they came; that is my recollection.
Q. What was the subject of that interview?
A. They discussed the matter of banks not paying exchange, paying exchange or remitting at par, and that it would be injurious to them if they had to remit at par. I remember the reply I made to them was that a good many small national banks were in the system, and that they were not collecting exchange on remittances, and it was not hurting them; that none of them had gone out of business, not a single one that I know, and I did not think that if this went into effect it would affect them as materially as they thought.
Q. *You admitted it would deprive them of some revenue on exchange?*
A. *Yes, sir; I did admit that.*
Q. *In other words, they would be wounded, but not killed?*
A. *Yes, sir.*
I do not know what they came for; they seemed to want to talk about it; I am willing to talk to anybody about anything, especially when they call on me. I recall Mr. Harvey, or one of them, I do not recall just which one, remarking that he thought this was inevitable all over the country, and he did not see any use in the country banks opposing what seemed to be inevitable.
Q. *That it was better to bow to the inevitable?*
A. *Yes sir, as the French say, bow low, if you bow at all.*
The letter copied as Exhibit "B" to the bill was prepared by *Adelson. He was appointed to take charge of this matter;* but reading that letter, before I signed it, I did not attach very much importance to those particular words. My own idea in sending the letter was to impress upon them the advantages that would accrue to them, the facilities par clearance would afford and get them to accept the invitation to come in. In regard to those words quoted, I do not attach, as I said before, any significance to them, because I did not intend to embarrass or annoy them, or break them up or anything of that kind, and I am sure our directors did not; I was governing through the directors of a bank.
Q. Did you expect the man who received that letter to think you were just bluffing and did not mean it?

A. No; I thought they would see from the letter the idea that we had postponed so long putting it in effect. *And now we were prepared to go ahead and do it;* I thought a great majority of them would acquiesce, in fact I did not think there would be much opposition to it.

I think it was ten days or two weeks before these words were called to my attention, by someone outside; said the banks were taking exception to these words. I was really surprised and went back and read the letter to see the view they took.

Q. You never wrote any follow up letter then?

A. No. Things fell so fast and furious that I did not have time.

Q. Didn't you hear read here, letters by the score, from Mr. Adelson, where substantially the same thing was used by Mr. Adelson?

A. I did not keep up with it. *I back up anything that Mr. Adelson did.*

Abstract of Testimony that was Rejected.

George D. Wood, Brookings State Bank—Unusual methods of the collection of cash items upon a bank that declines to remit at par the proceeds, without any charge for exchange, embrace such things as assembling together a large number of checks and presenting the some over the counter of the bank on which they are drawn for payment in currency, accompanied by the refusal to accept anything in payment but currency; that among such methods of collection, out of the ordinary, there have been the return of checks drawn on such bank, even before presentation, with notice of dishonor, and that that notice, instead of being sent to the endorser of the check from whom it was received by the Federal Reserve Bank, was duplicated and sent to the payee, or to the drawer of the check, being the depositor of the drawee bank; that among other such methods, actually experienced by this witness, in the unusual methods of collection against non-par remitting banks has been the return of the check before presentation for payment to the bank upon which it was drawn, and that on the check was the notation that the bank was closed and out of business, and the check returned with that notation on it; that among other embarrassing, annoying and expensive methods employed against a State bank, has been the stationing of an agent in the town where the State bank is located, who ostentatiously takes the checks of that bank to the counter, and takes the currency and counts it in the presence of the customers of the bank, and who undertakes to create the impression that the bank is in financial difficulties, thereby greatly discouraging and frightening the customers; that all of these methods have been employed against this particular witness' bank by the representatives of the Federal Reserve Bank of San Francisco who offered to abandon and withdraw them all if the witness' bank would agree to remit the proceeds of cash items without exchange, and make that agreement indefinite and continuous (Tr., 350).

Ernest Meek and *Charles Rous*, Catlettsburg, Ky., cashier and assistant cashier of Farmers & Merchants Bank of Catlettsburg, since

its incorporation in September, 1916, and in the capacity of Cashier and Vice-President since that time (answering separately).

Said bank is a state bank, organized under the State Banking laws of the Commonwealth of Kentucky and is not a member of the Federal Reserve system. It has never signed any agreements with the Federal Reserve Bank of Cleveland or any other Reserve Bank. Said Farmers & Merchants Bank has never consented to have its name placed upon the par list of the Federal Reserve Banks and particularly of the Federal Reserve Bank at Cleveland. It is located in the Fourth Federal Reserve District. Said bank has been accustomed to keep its reserve accounts in its correspondents' banks in Cincinnati, to-wit: The Fifth National Bank and the Third National Bank and in its correspondent bank in New York City, The Hanover National Bank. It has been accustomed to receive two and one-fourth (2¼) per cent interest on the daily balance in said Reserve accounts.

The custom of charging exchange has been in force with this particular bank, since its organization, your deponent has been engaged in the banking business in this locality for thirty (30) years and such exchange charges have been customarily made during all of that time by every bank, whose business was known to your deponent. The Federal Reserve Bank of Cleveland inaugurated its campaign about Jan. 1, 1920, to have all banks in said Reserve District whether members of the system or not, remit for checks drawn upon them without any deduction for exchange.

It first sought to obtain the consent of the non-member bank, Farmers & Merchants Bank of Catlettsburg, by correspondence, setting forth the merits of par clearance as the said Reserve Bank saw them and later it sent its agents and representatives in person to expound and explain the merits to said Farmers & Merchants Bank and finally it sent its agents, who threatened to use means of collecting all the checks upon the Farmers & Merchants Bank in cash over its counter. The Farmers & Merchants Bank still declined to enter into an agreement to clear checks at par. Then the said Reserve Bank collected all checks upon the Farmers & Merchants Bank in cash over its counter through the agency of the American Railway Express Company. The Express Company ceased to handle these checks for collection and the defendant appointed a local agent, resident in Catlettsburg and through said local agent, presented all checks that came into its hands, drawn upon the Farmers & Merchants Bank and demanded cash in payment over its counter. The Farmers & Merchants Bank, in order to protect itself against the Reserve Bank in its effort to exhaust the cash from its vault, stenciled all blank checks furnished its depositors, with this endorsement: "Payable in cash or exchange draft at the option of the Farmers & Merchants Bank of Catlettsburg." On all checks presented by the Reserve Bank, which bore this endorsement the Farmers & Merchants Bank gave an exchange draft upon its Cincinnati Reserve in payment therefor. This exchange draft on its Cincinnati correspondent was to all intents and purposes the same as cash to the said Reserve Bank, except that it did not accomplish the said Reserve Bank's pur-

pose of reducing the cash in the vaults of the Farmers & Merchants Bank. The Reserve Bank continued to present checks and demand cash in payment over the counter for one year and six months.

After Dec. 23, 1919, instead of out of town checks, or checks owned outside of Catlettsburg and drawn on the Farmers & Merchants Bank coming through the regular channels from the various banks owning said checks and from our regular correspondent banks, these out of town checks were all accumulated and collected by the Federal Reserve Bank, with the exception of a very few, which continued to come through our correspondent banks, and were sent beginning January, 1920, to the American Railway Express Company for presentation and payment in cash over the counter (Tr., 363).

Copy of written instructions to the Express Company attached as Meek Exhibit No. 3 (Tr., 372).

The Federal Reserve Bank of Cleveland the latter part of Dec., 1919, sent this authorized representative, M. C. Magee, to solicit my agreement to par clearance. M. C. Magee first came to Catlettsburg, in December, 1919, and attempted to persuade your deponent, the Cashier of the Farmers & Merchants Bank to agree to clear checks at par. Failing in his efforts to obtain such an agreement, he then made a demand, as a matter of right that the Farmers & Merchants Bank consent to clear checks at par. *This demand being refused him he then threatened to injure and destroy the business and business reputation of the Farmers & Merchants Bank and stated that they would put the Farmers & Merchants Bank on their par list, obtain possession of all of its out of town checks, present such checks at its counter and demand of it payment in cash therefor. And he stated that no bank on earth could stand such a method of collection.* He gave out at drug stores, at the Postoffice, at the Express Office, that he was a government agent, a Federal Reserve Man and left the impression with the citizens of the small town of Catlettsburg that he occupied a place of authority with the United States Government. He then inquired of the clerks in the United States postoffice, local express office and in the drug stores and mercantile stores about town of and concerning the business reputation and financial standing the Farmers & Merchants Bank, of its officers and employees and left the impression among the citizens of the town that the Farmers & Merchants Bank was in financial distress and that he, as a representative of the Federal Reserve Bank, was in Catlettsburg for the purpose of protecting the interests of said Reserve Bank.

The said Magee created scenes and disturbances in my bank in connection with the collection and presentation of the items held by the Federal Reserve Bank of Cleveland and sought or made an opportunity, almost every time a depositor came into the lobby of my bank, of creating or starting a disturbance with the very evident purpose of leaving an impression with such depositor that would be unfavorable and injurious to my bank's credit.

As a result of Mr. Magee's statements, a number of our depositors took their accounts to our only competitor, the Kentucky National

Bank of Catlettsburg and our business was suffering severely. W were not able to lend much cash, by reason of the demands of th Federal Reserve was making upon us. His actions required us t maintain a very excessive cash reserve in our vaults as we were hav ing no way of knowing what demands would be made on us from da to day and at the same time we had to maintain reserves with ou correspondent banks for the same reason. Our situation becam known to the community at large and investigation was made by Grand Jury of Boyd County and indictments returned against M Magee for circulating statements derogatory to my bank, which made a penal offense by the Statute of Kentucky.

Mary B. McCall, continued to present and collect checks.

Miss McCall presented all checks sent by the Cincinnati branc of the Federal Reserve Bank of Cleveland and presented the sam daily at our counter and demanded cash in payment thereof. Mis McCall came to my bank equipped with a gocart, in which to plac currency and cash collected by her in payment of the checks accumu lated. She carried sacks, in which to place the currency and coi and seals and blank papers. She assorted and listed her cash in th lobby of my bank and placed it in these paper bags and carried from the bank in the gocart in plain view of my bank's deposito and of the citizens of the community, which had every injurious e fect upon the credit of my bank that a "run" upon it would have ha Said McCall, Magee and Express Company each refused to acce draft in payment of items upon which they claimed to be entitled demand cash although we offered to make the draft in full for th face value of the items without deducting exchange of any kin By reason of the methods I have described, seeking to compel u to sign the par clearance agreement, we have lost in exchange a least eight or nine hundred ($800-$900) dollars a year. We ha lost a number of depositors, who moved their accounts by reas of the campaign by the Federal Reserve Bank of Cleveland. W have lost earnings on loans by reason of the necessity for keepin an excessive amount of cash in our vaults to meet the daily cas items presented by the Federal Reserve Bank of Cleveland and w have been injured in our reputation and standing as a bank ins tution.

Under the old method, we could with reasonable certainty, dete mine the average daily amount of cash that would be required to pa checks over our counter. We could not, with any certainty, dete mine the average amount of cash required for payment of chec over our counter, after the inauguration of the methods I have her inbefore described. The effect of placing the name of my bank o the par list of the Reserve Bank of Cleveland, it was a notice t every Federal Reserve Bank, that every check drawn on my ban would be collected by the Federal Reserve Bank of Cleveland, free cost and for that reason practically all of my out of town checks we sent by the various Federal Reserve Banks throughout the Unite States to the Cincinnati branch of the Federal Reserve Bank Cleveland and collected together and forwarded to Catlettsburg an presented at my counter.

Kentucky was colored as a universal par clearance state.
This was not true as to the Farmers & Merchants Bank (Tr., 368).

H. Flood Madison, Bastrop, Louisiana. My connection with the Bastrop State Bank began in June, 1900, at which time I was elected President; and I have held that position ever since. The Bastrop State Bank was organized in 1890 or 1891. The Federal Reserve Bank of Dallas, Texas, has used every conceivable effort to obtain the consent of the Bastrop State Bank to remit cash items at par; and not only that it has adopted every conceivable means to force the accomplishment of that result. The Bastrop State Bank could not see its way clear to sign the par clearance agreement; and, the negotiations to do so having failed, the Federal Reserve Bank of Dallas undertook by various methods to coerce it to sign the agreement; sent Special Agents here to interview the customers of the Bastrop State Bank; and threatened to locate a Special Agent here to collect all cash items which it received on that Bank in cash across its counter; and on at least two occasions held such cash items until they amounted in the aggregate to more than double the cash reserve which the Bastrop State Bank under the laws of Louisiana was required to have on hand in its safe or vault and then presented these items across the counter of the Bank for payment in cash; and on one occasion at least the Federal Reserve Bank of Dallas sent circular letters to a great many of the customers of the Bastrop State Bank; and finally the Federal Reserve Bank of Dallas sent all of its cash items on the Bastrop State Bonk for collection, only in cash, through the American Railway Express Co.; and it is today endeavoring to collect its items in the same manner in utter disregard of the laws of this State on the subject.

The "Instructions to Agents" in the collection letter in which such cash items are sent through the American Railway Express Company appeal to me as being very harsh in their terms—in any event they are self-explanatory; and I attach one of such original collection letters as a part of my answer to this question—marked Exhibit 1 for identification; and for a convenience of reference I take the liberty of quoting the first three paragraphs of the "Instructions to Agents" on the reverse side of this letter:

"(1) Payment of this collection must be obtained in cash and remitted in cash. If received within banking hours, present immediately for payment all items to bank on which drawn and make remittance therefor on same date. If received after banking hours, or on holidays, items must be presented to bank on which drawn and remittance must be made the next succeeding business day.

"(2) Do not hold, under any circumstances, for convenience of paying bank.

"(3) Items are payable in cash over the counter of the bank on which drawn and, under no circumstances, must the collecting agent accept bank's draft for the items in settlement. You are instructed to accept only lawful money for the United States or national bank notes, currency or coin in payment of items presented."

The name of the Bastrop State Bank was placed on the par li of the Federal Reserve Bank of Dallas, Texas; and this was do not only without the consent but over the serious protest of th Bastrop State Bank.

There was a very marked difference in the number of checks pr sented through the Federal Reserve Bank of Dallas prior to the tim it placed the Bastrop State Bank on its par list and subsequent t that time. In fact the checks presented by the Federal Reserve Ban prior to that time were altogether negligible both in number an amount; but subsequent to that time the checks presented throug the Federal Reserve Bank represented a very large per cent of th checks drawn on the Bastrop State Bank.

The whole point is that if the Federal Reserve Bank did not carr the Bastrop State Bank on its par list the former Bank would recei practically no checks, cash items, on the latter Bank—the quantit would be altogether too negligible for controversy or serious consi eration; a fact which was clearly demonstrated by the course of th business between the two banks prior to the time that the Feder Reserve Bank placed the Bastrop State Bank on its par list.

The method of collecting checks by the Federal Reserve Bank an its agents drawn on the Bastrop State Bank did in at least two in stances involve an accumulation of checks; and while I am unable t state the exact period of time they were accumulated, I know that i was several days.

The aggregate amount of checks thus accumulated in the two in stances above mentioned when presented for payment in cash acr the counter of the Bastrop State Bank was more than double th amount of the cash reserve which that Bank was required to carr in its safe or vault under the laws of the State of Louisiana.

There has been no change in the method of collecting cash item on my bank, since the decision of the Supreme Court in the abo stated case.

Based both on experience and observation, I state without hesit tion, and without any fear whatever of successful contradiction, th the Federal Reserve Bank of Dallas, Texas, has not hesitated to u "Big Stick" methods in its efforts to force the country banks int its par clearance system; and today it is following up those method in utter disregard of the laws passed by the Legislature of this Sta for the protection of the State banks.

Again, the Federal Reserve Bank seemed not to hesitate at an expense to accomplish its purpose—even though it claims a gre saving for its par clearance system: Today that bank is willing t pay the American Railway Express Company $4.33 per $1,000 fo transporting money from Bastrop, Louisiana, to Dallas, Texa whereas the Bastrop State Bank offers to render that same servic by remitting the money in New York, St. Louis or New Orlean exchange for $1.00 per $1,000.00.

Then, too, the Federal Reserve Bank seems not to hesitate to spen any amount of money in spreading its propaganda in support of it par clearance system; but, on the other hand, the country banks ar unable to do this—they have not the great facilities of the Gover

ment and its unlimited resources to back them up in presenting their side of the question to the public.

The result has been to estrange the two banking systems of the country—to create a strong antagonism between them; Whereas they should go hand in hand in financing and upbuilding the whole country just as they did during the World War.

But as soon as the War was over the Federal Reserve Bank of Dallas inaugurated a war of its own—a par clearance war—on the country banks; and has waged that war continuously and relentlessly ever since. Thus the spirit of co-operation is gone (Tr., 374).

R. B. Clark, Tupelo, Mississippi. Active Vice President. The Bank of Tupelo (Tr., 395, *et seq.*).

On or about January 25th, 1920, witness noticed article appearing in the New Orleans Item relative to the campaign of the Federal Reserve Bank of the Sixth Federal Reserve District to enforce par clearance in that District.

The following is a true copy except that where the name M. B. Wellhorn appears in the second line of the second paragraph it should be M. B. Wellborn instead, and except that where the name Mr. Wellhorn appears in the fourth line of the third paragraph it should be "Mr. Wellborn":

"Reserve bank starts drive to collect checks at par—Many Southern banks violating Federal act by charging for collections, official says—Observance will mean great saving for Dixie.

"A national campaign has been launched by the Federal Reserve Board to compel observance of the provision of the Federal Reserve act, relative to the collection of checks at par.

"The campaign has been actively launched in New Orleans by Marcus Walker, manager of the local Federal Reserve Bank, and M. B. Wellborn, governor of the Federal Reserve Bank of Atlanta, Ga., of which the New Orleans bank is a branch.

"The campaign is to be directed particularly against recalcitrant banks in the Atlanta district, as it is here that more than 29.6 per cent of the banks violating the Federal act are found. The practice of charging for the collection of checks, it is said in a recent statement by Mr. Wellborn, is 'a burden and an unnecessary toll on commerce.'

"'The universal application of the practice of collecting checks at par will mean a tremendous saving to commercial and business organizations all over the United States, and particularly in this section, as the greatest number of banks refusing to institute the practice are in the South,' said Mr. Walker, Thursday.

"The officers of the Federal Reserve System have been successful in securing the co-operation of a great majority of the banks of the country, but a large number have steadfastly refused to accede to the request of the Government, and now an active campaign of solicitation is to be carried on. He explained, that all member banks are compelled to comply with the provisions, but that non-member State banks were only directed to do so.

"If a merchant in New Orleans receives a check from his custom in the country or anywhere outside of the city, drawn on a non-me ber bank, and the New Orleans merchant deposits this with a me ber bank here, he is charged for collection of this check if the no member bank refuses to comply with the Federal provision a charges the city bank for the payment of the order," said M Walker. "While the charge on a single check may not be lar the aggregate number of checks handled during the year by a bank records a large total, which, of course, must inevitably be pa by the merchants and business houses. This actual expense must added to the additional cost of bookkeeping and clerical work co sequent upon the practice of some of the banks following one pra tice and some the other."

" 'What we are going to do,' said Mr. Walker, 'when a non-me ber bank refuse to pay the check at par is to collect the check at t counter, even if a special messenger must be sent to the bank. Th will have the effect of compelling the recalcitrant bank to acce to the par-collection provision, as it will draw considerably on the cash reserve.'

"According to Mr. Walker, of the 30,260 banks in the Uni States 26,315 are on the Federal Reserve par list. Of the 3,945 r maining banks which are not in the par list 1,168 are in the Atla district. Only 2,777 banks in the other 10 reserve districts are n on the par list and do not comply with the par collection of che of the Federal act."

The following documents were returned with and made a part said interrogatories, and tendered in evidence by plaintiffs and o jected to by defendants on the same ground taken as to the int rogatories, and said objection was sustained by the court and s evidence rejected.

The New Orleans Item.

NEW ORLEANS, *January* 28, 1920

Mr. R. B. CLARK,
Vice-Pres. the Bank of Tupelo,
Tupelo, Miss.

DEAR SIR:

The information contained in the article headed "Reserve Ba Starts Drive to Collect Checks at Par," came from Mr. Mar Walker, Manager of the New Orleans branch of the Federal R serve Bank. The writer usually handles such information for t paper. * * *

Memphis Branch
Federal Reserve Bank of St. Louis,
Memphis, Tennessee.

MAY 27, 1919.

Mr. R. B. CLARK,
Cashier Bank of Tupelo,
Tupelo, Mississippi.

DEAR SIR:

May we invite your further consideration to the proposition set forth in former letters to you, requesting that you remit to us at par for such checks on yourselves as we may receive.

You are, probably, aware of the fact that the Federal Reserve Banks are engaged in a campaign looking to the extension of the Federal Reserve Par List. * * *

Federal Reserve Bank of St. Louis,
Memphis, Tenn.

DECEMBER 20, 1919.

BANK OF TUPELO,
Tupelo, Mississippi.

GENTLEMEN:

For your information, and to advise you of the very decided progress that is being made *in the campaign being conducted by the Federal Reserve Banks* to have all banks agree to remit at par. * * *

Federal Reserve Bank of St. Louis,
Memphis, Tennessee.

MARCH 24, 1920.

BANK OF NETTLETON,
Nettleton, Miss.

GENTLEMEN:

We are forwarding you today cash letter composed of checks on yourselves. Although we have received no agreement from you to par items, we thought it best to explain to you that your name appears on the Federal Reserve Par list, which is now in our hands.

The names of quite a few Mississippi banks were sent to Washington several weeks ago to enable the Federal Reserve Board to have sufficient time for preparing the printed booklet known as the "March Supplement."

We, of course will be receiving checks on your bank, and you are no doubt aware that Section 13 of the Federal Reserve Act provides that no exchange charge shall be made against a Federal Reserve Bank, and we kindly ask that if these checks cannot be remitted to

us for their face value, that you certify same and return to us a
we shall accept your decision as definite for the present.

Yours respectfully,

A. J. WILLIAMS,
Cashier.

The Bank of Tupelo,

Tupelo, Miss.

APRIL 9*th*, 192

J. T. FARGASON COMPANY,
Tupelo, Miss.

GENTLEMEN: * * *

To sum up the situation:

First. No bank in the state of Mississippi has ever attempted
do one thing to injure in any way the Federal Reserve Banks;
the other hand the Federal Reserve Bank has attempted by
most offensive means possible, without any warrant of law, to
force their ideas upon the state banks, and the law passed by
legislature of the state of Mississippi was purely a measure of
fense which incidentally gave the St. Louis banks, and all of
such banks, protection against those banks in the state of Missis
which had been charging a rate higher than $1.00 per thousand.

Second. There is absolutely nothing in the Federal Reserve
that can be interpreted as requiring the St. Louis banks to de
such checks with the Federal Reserve Banks and they are not de
so when such checks are not collectible at par, therefore, the
Louis concerns can deposit these checks with their St. Louis ba
and the St. Louis banks will, just as they have always done, s
these checks direct to the Mississippi banks and the Mississippi ba
will just as they have always done, deduct $1.00 per thousand
remit them in acceptable exchange.

Third. Even were such not the case, as stated, the Missis
banks will give direct service to those St. Louis concerns at the s
rate and in the same manner that they would give such servic
the St. Louis bank, therefore, they cannot sustain the statement
it would cost them more at the present time than it has formerl
Much more could be said but certainly this ought to be sufficient.

The only change from the condition that has existed for ma
many years is the agitation initiated by the Federal Reserve Ba
and those St. Louis concerns, and their position is not even sustain
by the Federal Reserve Act, but only by a very arbitrary interp
tation and ruling of the Federal Reserve Board, which, as you kn
has absolutely no authority or jurisdiction over non-member st
banks.

Yours very truly,

R. B. CLARK,
Vice-Pres.

(Tr., 415.)

Craig, William S., Tallulah, Louisiana, Cashier of Tallulah State Bank for nineteen years, or since September, 1902. Federal Reserve Bank of Dallas is the name of the Federal Reserve Bank in the district where witness' bank is located. A representative of the Federal Reserve Bank of Dallas called upon witness and requested him as representative of the Tallulah State Bank to agree to remit at par to the Federal Reserve Bank of Dallas for all checks on said Tallulah State Bank presented through said Federal Reserve Bank. He said if witness did not agree to remit at par that they would take steps to have the checks presented through some other channel and demand cash over the counter. He stated that checks might sometimes be presented at one time for an amount in excess of the cash in witness' vault, in which case if the checks were not paid they would be protested for non payment. Witness offered to remit at the same price that would be charged by the Express Company or the Postoffice for transmitting remittances of equal amount and the offer was declined. This representative stated that he knew the banks could not hold out for any great length of time in paying their checks in cash over the counter as it would be a losing proposition to them and they would in time be forced to join the par clearance system, therefore the Federal Reserve Bank would not consider such an offer.

This created the impression upon witness that the Federal Reserve Bank was willing to proceed to any extremities to force their par clearance scheme, and were perfectly willing to force out of existence any banks that did not agree to their demand.

The representative stated that the Federal Reserve was making very large earnings and that the Federal Reserve Bank was prepared to use any part or all of this large earning to force the country bank into their par clearance system therefore it was useless for the country bank to oppose joining the system. These threats forced witness as representative of the Tallulah State Bank to join the par clearance system, reserving the right to withdraw at any time by giving notice. Witness signed because he was forced to do so through fear of injury to his bank (Tr., 424).

C. D. Waggoner, Norwood, Colorado, Banker.

I was connected with the Norwood State Bank in November, 1919. Norwood is about 500 Miles from Denver, Colorado. Norwood is about 18 miles from the nearest railroad station. I had an interview with a representative of the Federal Reserve Bank relative to par clearance. I was requested to sign a card agreeing to remit at par but after a considerable discussion I declined to sign this card. He said that I was not being fair to our stockholders in taking the attitude that the Federal Reserve Bank would ultimately force us to their terms. I asked him how they would do this and he said that in one instance they had collected enough checks against a bank until they knew they would not have cash enough to pay the checks and they presented them at the window and refused to accept anything but cash and when this was not forthcoming they protested the checks and closed the bank's door. He said that this

would happen to us if I did not agree to their terms. I told h that he would remit at par we have never since made them a charge for exchange because our bank was not large enough to en into a fight with the Federal Reserve System (Tr., 427).

Deary, W. A. (Bloomington, Nebraska): Connected with Far ers' State Bank, of Bloomington, Nebraska, in January, 1920, d ing which month one M. L. Bishop, representing the Omaha Bra of the Federal Reserve Bank of Kansas City, visited the Bloomi ton bank, and requested its officers to sign a par clearance agr ment. Bishop said that, unless this agreement was made, the Fe eral Reserve Bank would have checks on this bank presented at window and cash demanded, and would refuse to accept drafts payment. * * * That the Federal Reserve banks were going force par clearance, no matter what it cost to do so; and would car out the policy of collecting cash over the counter by special rep sentatives, regardless of what it cost to do so (Tr., 430).

John B. Helpman, Cashier Miners and Smelters Bank, Northpo Washington.

I have been connected with the bank at Northport, Washing for six years, the first of next January. In the matter of paym of checks for account of the Federal Reserve Bank at San Francis they sent their checks through the Express Company and the E press Company demanded cash at the window (Tr., 432).

O. J. Irwin, Loretto, Nebraska, Cashier of Loretto State Ban Witness was connected with this bank during December, 1919, d ing which time the Federal Reserve Bank of Omaha, Nebraska, se some checks or cash items on the Loretto State Bank through t American Express Company; when these checks were presented t agent of the company demanded cash in payment therefor. La in December a party of three claiming to represent the Federal R serve Bank of Omaha, presented an agreement for the Loretto St Bank, to sign, agreeing to handle all checks from the Federal Re serve Bank at par. At that time they informed us that they we in position to make it very unpleasant for us if we did not sign th agreement. The Party consisted of a driver of an automobile wh remained in the car and three who came into the bank. Two the parties who came into the bank claimed to represent the Fe eral Reserve Bank, the third party being an attorney and Notar Public from Albion, Nebraska. Upon our failure to sign said car they informed us they were in position to enforce their demand We did not sign the card presented at that time and they presente some checks for payment and demanded payment thereof in cas The amount of said checks in the aggregate was $11,197.69. T dates of said checks indicated that they had been held before pres tation for about seven days. We offered to pay said checks wi a draft on an Omaha bank where we kept our reserve fund but the refused to accept it and they informed us that if not paid in cu rency they would protest every check immediately. They brou

Notary Public with them for the purpose of protesting said checks and they informed us that if we continuously refused to sign said agreement they were in position to say that we could not borrow a "damn dollar" at any national bank. After all these threats were made, we signed the agreement to prevent the checks of ours being protested and avoid the necessity of keeping a larger amount of cash on hand, than had been our custom when checks were presented through the mail. One of the many reasons why we were induced to sign said par clearance agreement was in order to save the expense of protest fees on a large number of checks presented. About 243 checks were at that time presented for payment in currency for which the protest fees would have amounted to about $600.00. After we signed the par agreement they accepted our drafts on the Omaha Bank in payment of the checks. Our signature to the par agreement was not voluntary but they had us in a position we could not refuse without embarrassing the bank (Tr., 433).

W. H. Kuenzi, Clyman, Wis. Cashier of Farmers State Bank of Clyman, Wisconsin.

Early in 1920 we received letters from the Federal Reserve Bank of Chicago relative to the so called par clearance; in none of our answers did we agree to remit at par, and we continued making our regular exchange charges on the cash items sent by them to us for collection. Shortly after the local express agent presented checks drawn on us over the counter and demanded cash in payment. On May 21st, 1921, shortly after our opening hour in the morning an agent of the Federal Reserve Bank of Chicago called and presented checks drawn on us amounting to over six thousand dollars. Inasmuch as this was about twice the amount of cash usually carried, we were unable to pay them. The agent however offered to take a draft in payment providing that thereafter we would arrange with our correspondent to remit at par in Chicago exchange for all items cleared through the Federal Reserve Bank. He also related how checks were collected other than through the express agent appointed. As we could not afford to have our customers' checks presented that morning dishonored, we had to follow the course as outlined by him, and since then our correspondent remits for items drawn on us forwarded from the Federal Reserve Bank (Tr., 435).

Nower, N. L. (Winsboro, La.): Witness is cashier of the Franklin State Bank and Trust Company since April 16, 1917. About two years ago, the first representative of the Federal Reserve Bank at Dallas approached the witness on the subject of par clearance, and about a year ago the last one of these representatives approached witness on that subject. Witness did not sign the par clearance agreement. These representatives threatened to have the checks protested, and that would cause dissatisfaction among the customers of witness' bank; which would finally cause it to change its point of view. Witness still refused to sign, but he afterwards parred their mail collections until the State of Louisiana passed an Act giving them the right to charge exchange. After witness' bank ceased to

par their mail items, these items from the Federal Reserve Bank were presented for payment through the express company. Witness does not know how long they were allowed to accumulate, but frequently there were two or three collection letters presented at one time, bearing different dates, and sometimes as many as four. These checks were never presented at the bank more than twice a week, and sometimes only once a week. This remittance at par was forced upon witness' bank. It certainly was not voluntary. The amount of revenue derived from exchange on cash items amounts to a substantial sum for the country bank and witness' bank would suffer a loss of these revenues if it is compelled to conform to the demand of the Federal Reserve Bank and remit at par. The refusal of the bank to pay checks when presented and exchange charges refused was the result of the course of conduct of witness' bank in the progress of the warfare between the Federal Reserve Bank and the witness' bank on the subject of par remittance. It certainly tends to injure the reputation and credit of a bank to have checks drawn upon it against valid credits of the drawers returned as dishonored and unpaid. Witness arrives at this conclusion because he had so many complaints from this source, and, in some instances, lost accounts. Such a course is injurious to the credit and business of the bank and bankers and business men generally know it. Witness feels sure the Federal Reserve Bank knows it, and, realizing this result, the Federal Reserve Bank employs it as one of the means used in the effort to compel witness' bank to agree to remit at par. As a matter of fact, a small country bank cannot continue to conduct its business successfully and profitably and be at all times prepared to pay all checks drawn by all or a large percentage of its depositors in currency over its counters, and thus be deprived of the customary revenues charged for the service of transmitting the proceeds of such checks to other places (Tr., 439).

A. L. Norton, Allen, Michigan, President, Allen State Savings Bank, has been connected with this bank ten years on the First of August, 1921, as director, and has been president since January 1, 1914. This bank was placed upon the par list of the Federal Reserve Bank of Chicago by agreement but the bank does not expect to continue to operate under said agreement. It never agreed willingly to do so and we felt that we could no longer submit to it. We advised the Federal Reserve Bank on August 18, 1921, that on and after September 1, 1921, we would make regular exchange charges believing that under the recent Supreme Court decision they would be obliged to remove us from their par list and allow us exchange. They refused to assent to this arrangement and renewed their threats to pursue the same methods of collections which had been threatened and employed before we signed our par clearance agreement. They wrote witness a letter on that subject, as follows:

Receipt is acknowledged of your letter, dated August 18th, calling our attention to the decision of the Supreme Court of the United States regarding the collection of checks of non-member banks, and informing us that after September 1, 1921, you will resume the

practice of charging exchange at the rate of 1/10 of 1 per cent on all checks sent to your bank for collection and remission.

The Supreme Court's decision was rendered in a suit brought by a group of non-member banks to enjoin the Federal Reserve Bank from collecting checks drawn on the country banks by having agents demand payment in cash in cases where the country banks declined to remit at par, the complaint alleging that the Federal Reserve Bank undertook the collection of such checks by presentation and demand of payment in cash with the intent of injuring the banks on which the checks were drawn. As the issue before the Supreme Court was merely whether, as a matter of pleading, the plaintiff's bill of complaint stated a cause of action, the decision of the Supreme Court is not a final determination of the litigation and the case will now be sent back to the District Court of the United States for the Northern District of Georgia for trial upon the merits.

The opinion of the Supreme Court does not deny the legal authority of the Federal Reserve Bank to collect checks on non-member banks by making presentation thereof at the counter, but holds merely that non-member banks may be entitled to relief if they can prove that the Federal Reserve Bank malevolently intends to accumulate checks and present them in an oppressive manner for the sole purpose of injuring the banks upon which the checks are drawn.

In the opinion of the Counsel for the Federal Reserve Board, the Supreme Court's decision does not interfere with the present check clearing functions of the Federal Reserve Banks and those banks may continue, as heretofore, to collect checks drawn upon banks which are listed upon the par list.

Federal Reserve Banks are prohibited from paying exchange or collection charges to a bank for collection and remission of checks and as all banks in our district are included in the Federal Reserve par list, we must continue to collect checks drawn on your bank at par.

We prefer to continue to send your checks directed to you for remittance at par in Chicago or Detroit exchange, or, we will accept in payment shipments of currency at our expense. If it is not convenient for you to remit in Chicago or Detroit exchange, we shall be pleased to send your checks to your Michigan correspondent if you will arrange to have it remit to us on receipt at par in Chicago or Detroit exchange. Unpaid items would be subject to return within a reasonable time.

We hope you will reconsider your decision because if you will not remit at par for the checks we are sending to you, or arrange to have them collected through one of your Michigan correspondents at par, we will be obliged to make other arrangements to collect payment in full.

Kindly let us hear from you further, using the enclosed stamped envelope for your reply.

Yours truly,

(Signed) WM. C. BACHMAN,
Controller of Collections.

As between having to pay all or a large proportion of chec drawn on deposits in this bank in currency over the counter a remitting for the same without any charge of exchange, it would the lesser of two evils as a permanent arrangement to remit with exchange charges, and would be better for the bank to forego e change charges than subject itself to a permanent method of payi practically all checks drawn upon it in currency over the coun As between the two courses we should probably have to surren to the par clearance campaign (Tr., 436).

L. C. Nunn, Columbia, Cashier of the Citizens Progressive Ba of Columbia, Louisiana.

I have been connected with the Citizens Progressive Bank Columbia; I have been visited by three representatives of the Fede Reserve Bank with reference to agreeing to make remittances thro the mails at par.

Three different representatives of the Federal Reserve Bank Dallas, Texas, came to me on three different occasions. On the fi occasion the representative of the Federal Reserve Bank tried to the Citizens Progressive Bank, of which I am cashier, to sign up agreement to par with the Federal Reserve Bank of Dallas, Te This I refused to do. On the second occasion the representative the same bank came back to see me and again tried to get me sign up an agreement to par. When I refused he presented accumulation of eight or ten days' checks which checks totaled to $8,000.00 and demanded the cash. At that time I signed a si day agreement with this representative, but it was only after representative had demanded the cash for the checks he held an was practically forced to sign this agreement or close the doors the bank. On the third occasion the representative of the s bank called to see me concerning the same matter. I had cance our sixty day agreement to par before this last visit and after Legislature of Louisiana had passed an act prohibiting the Fede Reserve Banks from forcing state banks to par. At that tim signed a thirty day agreement to par after being forced to do so.

The first representative proposed to send the checks here by press and have them collected through the express office.

The second representative presented about $8,000.00 worth checks and refused to accept exchange for them and demanded cash, unless I would sign the par agreement with him.

The third representative threatened to write our customers t our bank would not pay their check dollar for dollar and that were asking for a discount on their checks.

A representative came to see me on three different occasions, I do not remember the name of either of them.

This third representative also stated that he was here to appo a collecting agency in the event that we did not sign another ag ment to par.

The last representative did not bring any checks, but the se representative brought about $8,000.00 worth of checks with a

eight different letters indicating that these checks had been piling up and held for about eight days, at least.

I finally signed the agreement to remit at par, because of the threats that had been made by these representatives which we knew, if carried out, would injure our business and cause our customers to become dissatisfied and for the further reason that we would have to keep on hand a large amount of cash to pay the checks that would be presented by the Federal Reserve Agents.

The methods threatened to be used against me would have injured my business, because if the majority of our customers, who are country people, had received such letters as the Federal Reserve representative threatened to write, they would not have understood why they lost customers and depositors. And for the further reason that if a collection agency had been appointed as threatened it might have caused our customers to lose confidence in our bank, as they would not have understood the situation and reasons therefor.

These agents declined to accept payment of checks presented by them in the form of bank drafts drawn on my correspondents before I signed the par agreement.

The last representative did not bring any checks with him. The second representative brought the checks and after I signed the agreement to par he accepted exchange for the checks (Tr., 442).

A. J. Mastalir, Pierce, Nebraska, assistant cashier of the Cones State Bank. I was connected with the Cones State Bank during November, 1919.

Two years ago on or about the 14th day of November, 1919, Mr. W. S. Lower and whom I afterwards found out to be Mr. M. L. Bishop, and a woman and a man drove up side of the bank, Mr. Lower and Mr. Bishop came into the bank and Mr. Lower said "We have a few checks here we would like to have you cash" and presented several checks one at a time and I paid them one at a time, and when I thought I was all through paying checks Mr. Lower then stated with a smile that he had one more check that he would like to have me pay, and presented a check for $30,100.96. I said to them this was more than we were required to have in our vault by law and all they did was to smile. I went back to the draft register and wrote a draft for this check and offered it in payment to Mr. Lower and he refused to accept it, stating that they had to have legal tender. I said to them "There is your draft and I have the check" upon which this gentleman that I found out afterwards to be Mr. Bishop reached down into a grip and pulled out a revolver and passed to back of Mr. Lower who put it into his hip pocket and I thought that I was going to be held up and Mr. Bishop replied "do you want to take that stand," upon which Mr. Lower stepped out of the bank over to the car and called in a stranger to me. I then went back into what we call the back room and consulted with Mr. F. W. Steinkraus, the cashier. While we were in the back room conferring, Mr. Lower and Mr. Bishop came back into the room where we were. We were pretty much embarrassed over not having enough money to meet this check, and when they came in they noted

our embarrassment and one of them said "Why don't you sign a par card, avoid this embarrassment and keep your money" (Tr., 44

Deibler, D. C., cashier of the Pierce State Bank, Pierce, Neb. Witness was connected with the Pierce State Bank during November 1919. Witness paid a number of checks in silver and currency on many different occasions to Mr. Lower who presented the checks, and on two different occasions Mr. Bishop was with Mr. Lower when presentation was made, one of these being November 7, 1919, on which date a gun display was made in our bank by these men according to witness' best recollection, said checks amounted in the aggregate to somewhere around $10,000, but witness doesn't remember the exact amount of this one day. Witness paid these checks in silver and currency to meet the demands of these men and payment was made on each check separately. It took witness about two hours to pay them. The payment of these checks by witness to Messrs. Lower and Bishop was witnessed by N. Benditzon, a local merchant, who was one of the bank's very best customers, that is one of the heaviest depositors. Mr. Benditzon entered the front door to make a deposit in witness' bank while Messrs. Lower and Bishop were collecting these checks at the window in silver and currency. Immediately upon the sight of these large stacks of silver and currency being taken from the bank and put into their grips, and the gun display by these men, Mr. Benditzon almost became panic stricken. He immediately demanded an explanation of all this excitement from witness and after he had done the best he could to explain the situation the former went direct to the president, Mr. Frank Pilger for a confirmation of witness' explanation. After some time, the two of them quieted him down and assured him that it was not necessary for him to become alarmed about his deposit in witness' bank and that it would not be necessary for him to make any withdrawals on this account (Tr., 456).

Pondron, J. A. (Dallas, Texas): Was a Director of the Houston Branch of the Federal Reserve Bank of Dallas, Texas, from date of its organization until October 17, 1919. Resigned as such Director on last-mentioned date; letter of resignation attached as it appears in transcript page 27. Reasons for resignation are fully stated in said letter. His information was that the Federal Reserve Board was responsible for the general plan and scheme of enforcing par clearance. As a Director of the Branch Federal Reserve Bank, at Houston, he had no discretion in such matters; was not officially informed of the action of the Houston Branch in connection with the campaign for par clearance. Was not informed of the plans looking to the enforcement of par clearance, which were incorporated without consulting him as Director. If non member banks declined the invitation to clear items at par, such items on such banks were accumulated and presented by a messenger from the Federal Reserve Bank, who demanded cash at the drawee bank's counter in payment of such items. Witness did not approve of this plan of campaign; but had no opportunity to voice his objections, and was

informed that the orders came from the Federal Reserve Board (Tr., 461).

A. K. Smith, Brainard, Nebraska, Cashier of the Bank of Brainard, Brainard, Nebraska, where I was engaged in business during November, 1919, a representative of the Omaha Branch of the Federal Reserve Bank of Kansas City called upon me. He desired my bank to agree to remit to the Federal Reserve Bank at par for all checks drawn on my bank and he said they would collect them in cash if we did not agree to remit to the Federal Reserve Bank at par for all checks drawn on the Bank of Brainard. He said that in the absence of said agreement checks on banks refusing to sign the par list would be held by the Omaha Branch of the Federal Reserve Bank until a large amount had been accumulated and then the checks would be presented by special messenger and payment thereof demanded in currency or same as had been done at Pierce, Nebraska. He knew we wouldn't have sufficient currency to pay these checks and felt that we must sign the par agreement. We did not sign the agreement willingly, but through fear of the consequences involved in demanding cash for the checks on our bank in accordance with what he told us. But for these threats of coercive measures with respect to the payment of said checks we would not have agreed to remit to the Federal Reserve Bank at Omaha, Nebraska, for checks on us without charge on us for said service (Tr., 462).

William Dangerfield Smith, Benton, Louisiana, Banker.

I have been connected with the Bank of Benton, Louisiana, since June 6, 1910, as Cashier. Mr. Floyd Ikard called upon me, first, sometime in the Fall of 1919. I think about September. He stated that he was representing the Federal Reserve Bank and called on us for the purpose of getting us to sign a contract to par all items sent to us on us from them. Mr. Clouse called on me next, some time in the Winter of 1920. He came for the purpose of getting us to sign a contract to par all items sent to us on us from the Federal Reserve Bank. Mr. Clouse stayed with me from the time I opened my Bank in the morning, about 9 A. M. almost to closing time about 4 P. M. The occasion of his coming was because I had cancelled a previous contract to remit at par for the Federal Reserve Bank at Dallas. I cancelled the agreement because I had been practically forced to sign the contract by Mr. Ikard, being a large loss to us. Mr. Clouse said: "Mr. Smith, we have been accused of having a 'big stick.' You know it is necessary in order to enforce the law, that you have a big stick. We did not write the law, but we are going to enforce it. You no doubt realize that we have resource of the government behind us, in fact, we are part of the government" (Tr., 462).

E. O. Terry, a Banker, Newton, Texas.

Sometime prior to February 4, 1920, I had quite a long conversation with Mr. Lawrence E. Dignan, a representative of the Federal Reserve Bank of Houston, which was a branch of the Federal Re-

serve Bank of Dallas, Texas, regarding the payment of a very lar bunch of checks presented to our branch Bank at Burkeville, Tex I stated to him that I did not consider just or right that he shou accumulate these checks in such quantities as it appeared he ha done in this instance, and present them for payment, demandi cash. I had a telephone conversation with the representative of t Federal Reserve Bank while he was at the Branch Bank of Burk ville, Texas, and I in the Newton County State Bank at Newt Texas, and I explained to him that his batch of checks exceeded o cash balance at that bank, and that I would appreciate very much he would let us issue to him Houston or Dallas Exchange in lieu actual cash. He agreed to take the exchange, provided that we wo sign a par agreement with the Federal Reserve Bank, otherwis demanded cash.

Mr. Dignan demanded currency in the payment of said chec We offered him exchange free of charge, and further offered h Exchange on the Newton County State Bank at Newton, Texas, a agreed to pay him cash for said exchange when he reached this po by private conveyance. He refused to accept my Exchange offe in lieu of currency. Mr. Dignan stated that his instructions fr the Federal Reserve Bank was such that he had to collect the che in cash, unless the par agreement was signed.

Mr. Dignan explained to me that the Federal Reserve Bank h an unlimited expense account, and that he could make trips Burkeville, Texas, as often as was necessary, regardless of the co and that he would continue these trips, in this manner, or bri other pressure to bear, until we signed the agreement. Mr. Digna said that other pressure would be brought to bear on our bank force it to sign the par clearance agreement (Tr., 4635).

R. S. Wilfley, Steele City, Nebraska, business of banking.

I was engaged as Cashier of the Farmers State Bank, Steele Cit Nebraska, on or about the 15th day of December, 1919, and am s so engaged On or about December 15th, 1919, one Mr. Bish called at my bank and presented me with his card also stating th he was representing the Federal Reserve Bank of Kansas Cit Missouri, and interviewed me. I believe it was M. L. Bishop a the purpose of his interview was to get me to sign a card consenti for my bank to par all checks sent to me by the Federal Reser Bank.

He said that the Federal Reserve was powerful enough to "pu across" and that they were even organizing opposition banks wh a bank refused. He said that the profits of the Federal Reser Bank were great enough that the country banks could not afford refuse. He advised me very strongly to sign the card stating th he had been a banker at some town in Kansas and he understo it and if he were me he would sign. He told me it would be usel to fight by letting them send the checks by express and I told hi that I thought it very unfair in method and very high handed. H replied by saying it was for the good of the cause. I asked him tell me frankly what would happen to my bank if I refused and

then told me of the intention to collect by express company and how they were causing train schedules to be changed and opposition bank organized.

The statements of said Bishop certainly did cause me to sign the card. I called my father on the telephone and told him what had been said to me by said Bishop and he was of the same opinion as I was as to the matter. He stated that he thought it a rather arbitrary manner of forcing things but perhaps I had better sign it. My father is a banker of 44 years' experience (Tr., 469).

Section 13, Federal Reserve Act.

Original Enactment (38 Stats., 263).

SEC. 13. "Any Federal Reserve bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal Reserve notes, or checks and drafts upon solvent member banks, payable upon presentation; or, solely for exchange purposes, may receive from other Federal Reserve banks deposits of current funds in lawful money, national bank notes, or checks and drafts upon solvent member or other Federal Reserve banks, payable upon presentation."

Re-enactment of September 7, 1916 (39 Stats., 752).

"Any Federal Reserve bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal Reserve notes, or checks, and drafts, payable upon presentation, and also, for collection, maturing bills; or solely for purposes of exchange or of collection, may receive from other Federal Reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal Reserve banks, and checks and drafts, payable upon presentation within its district, and maturing bills payable within its district."

Composite Copy of Section 13 of the Federal Reserve Act Showing Changes Made by the Re-enactments of September 7, 1916, and June 21, 1917.

NOTE.—All caps show original act.

Italics show additions made by re-enactment of Sept. 7, 1916.

Brackets show words omitted from original act when subsequently re-enacted.

Roman type shows additions made by re-enactment of June 21, 1917.

SECTION 13.

ANY FEDERAL RESERVE BANK MAY RECEIVE FROM ANY OF ITS MEMBER BANKS, AND FROM THE UNITED STATES, DEPOSITS OF CURRENT FUNDS IN LAWFUL MONEY, NATIONAL-BANK NOTES, FEDERAL RESERVE NOTES, OR CHECKS AND DRAFTS

[UPON SOLVENT MEMBER BANKS] (omitted in amendments)

PAYABLE UPON PRESENTATION; *and also for collection maturing bills;* OR SOLELY FOR

[EXCHANGE] (transposed in amendments)

PURPOSES *of exchange or of collection*, MAY RECEIVE FROM OTHER FEDERAL RESERVE BANKS DEPOSITS OF CURRENT FUNDS IN LAWFUL MONEY, NATIONAL BANK NOTES, OR CHECKS *upon other Federal Reserve banks* AND *checks and* DRAFTS

[UPON SOLVENT MEMBER OR OTHER FEDERAL RESERVE BANKS] (omitted in amendments)

PAYABLE UPON PRESENTATION *within its district, and maturing bills payable within its district;* or, solely for the purpose of exchange or of collection, may receive from any non-member bank or trust company deposits of current funds in lawful money, national-bank notes, Federal Reserve notes, checks and drafts payable upon presentation, or maturing notes and bills: Provided, Such non-member bank or trust company maintains with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank: Provided further, That nothing in this or any other section of this act shall be construed as prohibiting a member or non-member bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal Reserve banks.

Analysis of the Proviso to Section 13, Federal Reserve Act.

All banks are authorized to make reasonable charges for:

(*a*) *Collection* of checks and drafts and remission therefor by exchange.

(*b*) *Collection* of checks and drafts and remission therefor otherwise.

(*c*) *Payment* of checks and drafts and remission therefor by exchange.

(*d*) *Payment* of checks and drafts and remission therefor otherwise.

BUT

"NO SUCH CHARGES"

"Shall be made against the Federal Reserve banks."

This prohibition is conceded to mean that the Federal Reserve banks *cannot pay any such charges for:*

(*a*) *Collection* of checks and drafts and remission therefor *by exchange.*

(*b*) *Collection* of checks and drafts and remission therefor *otherwise.*

(*c*) *Payment* of checks and drafts and remission therefor *by exchange.*

(*d*) *Payment* of checks and drafts and remission therefor *otherwise.*

The Federal Reserve banks invoke this prohibition against payment of such charges to any bank, although a non-member and a non-depositor, and therefore as much without jurisdiction as the express company or any private citizen, and propose to use some other means of collection "NO MATTER HOW EXPENSIVE,"

And Pay Any Cost to

(*a*) The express company
(*b*) The post-office
(*c*) Resident agents
(*d*) Special agents

} for {

The collection of checks and drafts and remission therefor by exchange or otherwise.

The prohibition in the law has no limitation as to the medium through which the charge is made, but is confined to the character of the charge itself, to wit:

Either

1st. For *collecting* checks and drafts and remission therefor by exchange or otherwise,

Or

2nd. For *paying* checks and drafts and remission therefor by exchange or otherwise.

It must follow that if a Federal Reserve bank can require the banks to "deadhead" these charges because it is forbidden to pay them, the Federal Reserve banks can, with equal propriety, require

the post-office, the express company, or any unfortunate private citizen whom it might threaten with "financial violence," to collect and remit for its checks without charge. *Reductio ad absurdum.*

Copy Letter Governor Harding to Honorable Carter Glass, May 10, 1917.

DEAR MR. GLASS:

Since you were in my office this afternoon, Mr. Delano tells me he just had a talk over the telephone with Governor Strong of the Federal Reserve Bank of New York. He calls attention to the possibility, if not strong probability, of the Government having to pay banks $1,000,000 exchange charges in connection with subscriptions to the Liberty loan, assuming that the Hardwick Amendment, which the House has instructed its conferees to agree to, becomes a law. This estimate is based on the assumption that one-half of the total issue of bonds will be placed outside of New York. Subscribers are permitted to make payment by their checks upon local banks properly certified, and under authority given by Congress many of these banks will undoubtedly avail themselves of the opportunity to charge one-tenth of 1 per cent. Should this exchange charge be applied to one-half of the subscriptions, the expense of the Government would be $1,000,000.

I would suggest, therefore, that you call attention of Senator Owen to this, and suggest that he *ask the Senate to reconsider the Hardwick Amendment with a view to changing it so as to prevent it from applying to transactions connected with Government bonds.* This I think would give you the opportunity that you desire to handle the matter in conference.

Yours very truly,

W. P. G. HARDING,
Governor Federal Reserve Board.

(*Congressional Record*, 65th Congress, page 3527.)

Letter of April 30, 1918, from Hon. T. W. Gregory, Attorney General, to Hon. W. P. G. Harding, Governor Federal Reserve Board.

APRIL 30, 1918.

MY DEAR GOVERNOR:

I acknowledge receipt of your letter of the 19th instant with reference to my opinion of March 21, 1918, holding that Federal Reserve banks are prohibited from paying the charges for collection and payment of checks and drafts mentioned in the first paragraph of section 13 of the Federal Reserve act.

In a memorandum by the general counsel of the American Bankers Association, which you inclose, the point is raised that the prohibition against the charges referred to must be confined to checks owned by the Federal Reserve bank as distinguished from checks deposited to be cleared or collected for the account of a member or depositor.

You ask to be advised whether the board correctly interprets my opinion as implying that no such distinction can be recognized and that no member bank can under any circumstances make any charge against its Federal Reserve bank in connection with the collection or payment of checks deposited with the Federal Reserve bank as provided in the paragraph mentioned.

The reason for the suggested distinction is not apparent. I do not understand why checks deposited with a Federal Reserve bank to be cleared or collected can not be considered as owned by the bank.

As the basis of the check-clearing system contemplated by the Federal Reserve act, the Federal Reserve banks are required by section 16 to "receive on deposit at par," unconditionally, the checks therein specified drawn on Federal Reserve and member banks. If the phrase "receive on deposit" is given its ordinary signification, it seems clear that the Federal Reserve bank becomes the owner of the checks so deposited, title to the checks passing to that bank and the depositors receiving immediate credit therefore. (Burton *v.* United States, 196 U. S., 283; Security National Bank *v.* Old National Bank, 241 Fed., 1, and cases therein cited at pages 10 to 12.)

The first paragraph of section 13, as amended to extend the clearing facilities of the Federal Reserve banks to non-member banks and to include checks generally, requires each non-member bank availing itself of these facilities to maintain with the "Federal Reserve bank of its district a balance sufficient to offset the items in transit held by the Federal Reserve bank." As so amended, the paragraph may be regarded as at least authorizing the Federal Reserve bank to receive on deposit from non-member depositors as well as from member banks all classes of checks to be cleared or collected, taking the title thereto and giving credit therefor to the depositing banks.

As a Federal Reserve bank may thus become the owner of all the checks cleared or collected through it, there appears to be no basis in the act for drawing a distinction between checks owned by the Federal Reserve bank and checks deposited with it to be cleared or collected.

But even if the checks received could be classified on the basis suggested, the language of the paragraph seems to preclude the idea of excluding checks deposited to be cleared or collected from the checks as to which charges are prohibited.

The charges which the Federal Reserve banks are prohibited from paying by the final clause, "no such charges shall be made against the Federal Reserve banks," obviously include the "charges * * * for collection or payment of checks and drafts and remission therefor by exchange or otherwise" mentioned in the preceding clause. The checks authorized by the paragraph to be deposited with the Federal Reserve bank, upon being received by that bank, are to be collected from and paid by the banks upon which they are drawn. To say that charges in connection with the payment of these checks made by the banks drawn upon and collected from the Federal Reserve bank are not made against that bank seems to do

violence to the ordinary meaning of the words used, regardless of whether the charges are ultimately borne by it or subsequently transferred to the banks by which the checks were deposited.

Moreover, the legislative history of the amendment as referred to in the opinion shows clearly that the prohibition was directed primarily against the making of charges in connection with the clearing of checks. It was a proposed amendment to the Federal Reserve act, which apparently contemplated "charging the Federal Reserve banks for payment of checks cleared by them" that the President opposed in his letter to Senator Owen. And it was to prevent the possibility of such charges being made that the final clause was added, which, as explained by Senator Owen, prevented "troubling the Reserve banks" or "interfering with the clearing of checks at par by the Reserve banks" (55 Cong. Rec., p. 3761).

I construe the first paragraph of section 13 as prohibiting member banks under any circumstances from making the charges therein referred to against Federal reserve banks.

You are accordingly advised that the interpretation placed by the board upon my opinion of March 21 is correct.

Respectfully,
(Signed) T. W. Gregory,
Attorney General.

Hon. W. P. G. Harding,
Governor Federal Reserve Board, Washington, D. C.
(7th Ann. Rep. F. R. Board, 350.)

Regulation "J."

Harding Exhibit No. 2.

(Tr., 330).

Federal Reserve Board.

Washington, *June* 22, 1917.

The Federal Reserve Board transmits herewith a new issue of its regulations of 1916 applicable to member banks. This revision was necessitated by the enactment of the recent amendments to the Federal Reserve Act.

Regulations C, H, and J, have been materially altered because of those amendments. Regulation D has been amended so as to include postal savings deposits in the definition of a "time deposit" as required by the recent amendment to section 19. Regulation G has been amended by adding a paragraph relating to the renewal of loans upon the security of real estate. Regulations A, B, E, F, and I are identically the same as last year.

Instructions which concern only Federal Reserve agents or Federal Reserve banks will be covered in separate letters or regulations as in the past.

W. P. G. Harding,
Governor.

H. Parker Willis, *Secretary.*

HARDING EXHIBIT No. 3.

(Tr., 331.)

Regulation J, Series of 1917 (*Superseding Regulation J of* 1916).

Check Clearing and Collection.

Section 16 of the Federal Reserve Act authorizes the Federal Reserve Board to require each Federal Reserve bank to exercise the function of a clearing-house for its member banks, and section 13 of the Federal Reserve Act, as amended by the act approved June 21, 1917, authorizes each Federal Reserve bank to receive from any non-member bank or trust company, solely for the purpose of exchange or of collection, deposits of current funds in lawful money, national bank notes, Federal Reserve notes, checks, and drafts payable upon presentation, or maturing notes and bills, provided such non-member bank or trust company maintains with its Federal Reserve bank a balance sufficient to offset the items in transit held for its account by the Federal Reserve bank.

In pursuance of the authority vested in it under these provisions of law, the Federal Reserve Board, desiring to afford both to the public and to the various banks of the country a direct, expeditious, and economical system of check collection and settlement of balances, has arranged to have each Federal Reserve bank exercise the functions of a clearing-house for such of its member banks as desire to avail themselves of its privileges and for such State banks and trust companies as may maintain with the Federal Reserve bank a balance sufficient to qualify it as a clearing member under the provisions of section 13.

Each Federal Reserve bank shall exercise the functions of a clearing-house under the following general terms and conditions:

(1) Each Federal Reserve bank will receive at par from its member banks and from non-member banks in its district which have become clearing members, checks drawn on all member and clearing member banks and on all other non-member banks which agree to remit at par through the Federal Reserve bank of their district.

(2) Each Federal Reserve bank will receive at par from other Federal Reserve banks and will receive at par from all member and clearing-member banks, regardless of their location, for the credit of their accounts with their respective Federal Reserve banks, checks drawn upon all member and clearing-member banks of its district and upon all other non-member banks of its district whose checks can be collected at par by the Federal Reserve bank. The Federal Reserve banks will prepare a par list of all non-member banks, to be revised from time to time, which will be furnished to member and clearing-member banks.

(3) Immediate credit entry upon receipt subject to final payment will be made for all such items upon the books of the Federal Reserve

87

bank at full face value, but the proceeds will not be
of the minimum reserve nor become available to me
until actually collected, in accordance with the best
vailing.

(4) Checks received by a Federal Reserve bank
clearing-member banks will be forwarded direct to
will not be charged to their accounts until sufficient
within which to receive advice of payment.

(5) In the selection of collecting agents for ban
non-member banks, which have not become clearing
ber banks will be given the preference.

(6) Under this plan each Federal Reserve ban
par from its member and clearing-member banks ch
ber and clear-member banks and on all other no
whose checks can be collected at par by any Feder
Member and clearing-member banks will be require
Reserve Board to provide funds to cover at par al
from or for the account of their Federal Reserve
however, That a member or clearing-member ban
rency or specie from its own vaults at the expense
serve bank to cover any deficiency which may aris
only in the case of inability to provide items to offs
from or for the accounts of its Federal Reserve ban

(7) Section 19 of the Federal Reserve Act pro

The required balance carried by a member ban
Reserve bank may, under the regulations and subj
ties as may be prescribed by the Federal Reserve
against and withdrawn by such member bank fo
meeting existing liabilities: *Provided, however*, Th
at any time make new loans or shall pay any divi
until the total balance required by law is fully re

It is manifest that items in process of collection
be counted as part of the minimum reserve balance
a member bank with its Federal Reserve bank.
a member bank draw against such items the draft
against its reserve balance if such balance were suf
to pay it; but any resulting impairment of reserv
be subject to all the penalties provided by the ac

Inasmuch as it is essential that the law in res
tenance by member banks of the required minimu
shall be strictly complied with, the Federal Reserve
thority vested in it by section 19 of the act, hereby
penalty for any deficiency in reserves a sum equiv
est charge on the amount of the deficiency of 2 pe
above the ninety-day discount rate of the Federal
the district in which the member bank is located
serves the right to increase this penalty whenev
quire it.

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For the purpose of keeping their reserve balances intact member banks may at all times have recourse to the rediscount facilities offered by their respective Federal Reserve banks.

(8) Each Federal Reserve bank will determine by analysis the amounts of uncollected funds appearing on its books to the credit of each member bank. Such analysis will show the true status of the reserve held by the Federal Reserve bank for each member bank and will enable it to apply the penalty for impairment of reserve.

A schedule of the time required within which to collect checks will be furnished to each bank to enable it to determine the time at which any item sent to its Federal Reserve bank will be counted as reserve and become available to meet any checks drawn.

(9) In handling items for member and clearing-member banks, a Federal Reserve bank will act as agent only. The board will require that each member and clearing-member bank authorize its Federal Reserve bank to send checks for collection to banks on which checks are drawn, and, except for negligence, such Federal Reserve bank will assume no liability. Any further requirements that the board may deem necessary will be set forth by the Federal Reserve banks in their letters of instruction to their member and clearing-member banks. Each Federal Reserve bank will also promulgate rules and regulations governing the details of its operations as a clearing-house, such rules and regulations to be binding upon all member and non-member banks which are clearing through the Federal Reserve bank.

(10) The cost of collecting and clearing checks must necessarily be borne by the banks receiving the benefit and in proportion to the service rendered. An accurate account will be kept by each reserve bank of the cost of performing this service and the Federal Reserve Board will, by rule, fix the charge, at so much per item, which may be imposed for the service of clearing or collection rendered by the reserve bank, as provided in section 16 of the Federal Reserve Act.

Definitions and Illustrations.

An Illustration.

So much of the discussion of exchange charges as opposed to "par clearance" has been in technical terms, that some men have been more confused than enlightened thereby.

Let us take a typical case of the use of a check from the beginning to the end of the transaction of which it is a part, as prepared by an experienced banker.

Smith & Company, of Bartow, Georgia, are merchants. They are well rated and their business is desirable. They handle shoes among other things. Calling on them in an effort to get their business, are the salesmen of wholesale shoe dealers in many cities. Savannah, Atlanta, Richmond, Lynchburg, Boston and St. Louis and perhaps many other cities compete for their trade. Competi-

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tion is keen, but the Brown Shoe Company of St. Louis, for example, gets the business. They get an order for, say $2,000.00 worth of shoes. The terms and the discounts are agreed upon but not one word is said about the bill being payable in St. Louis, or in New York or St. Louis or any other particular kind of exchange. Competition for the orders of Smith is too keen for that. Probably the cash discount for payment within the specified time is as much as five per cent, so one-tenth of one per cent exchange is relatively too small a matter to make a point of; the Shoe Company has doubtless included this item of exchange in its "overhead" in computing its costs on the shoes, and bills it back to Smith in the invoice.

Smith does business with the Bartow Bank and his check on that bank is good and has always been readily accepted by all from whom he buys goods. If St. Louis should refuse to accept Smith's local check—Atlanta, Savannah, Richmond or Lynchburg will, and so competition forced St. Louis to do so. The one-eighth or one-tenth of one per cent exchange is insignificant compared with the amount of the bill or the profit to be made by the Shoe Company on the order.

So the Shoe Company says nothing about how the bill is to be paid, well knowing that Smith in accordance with universal custom in such cases will send his local check when the time comes to pay.

Smith, being a merchant in a country town, buys cotton. He has sold a shipment of cotton and drawn on the purchasing factor in Savannah with bill of lading attached to his draft. He deposits that draft in the Bartow Bank to his account and got immediate credit. The Bartow Bank sent the draft to its Savannah correspondent for presentation and collection and credit to its Savannah account; but several days elapse before the shipment of cotton reaches the port and the factors pays the draft. When it is paid the funds become available to the Bartow Bank but are in Savannah. In the meantime the Bartow Bank has "absorbed the float" and allowed Smith immediate use of the funds in Bartow. That is, the bank has advanced out of its own funds the amount of the draft and made it available to Smith before his draft was paid, and done it without charge.

Could any bank in good conscience be asked to do more for its customer?

Now in the meantime Smith's bill for $2,000.00 with the Brown Shoe Company has matured, and he has sent them his local check on Bartow to pay it, less the discount, as they knew he would when they sold him the shoes. That check is payable at the Bartow Bank and nowhere else. The Brown Shoe Company did not refuse the check and demand St. Louis exchange on the ground that the bill was due in St. Louis. They send him a receipt and thank him for his remittance and express the hope that they may be fortunate enough to get more of his business.

But the money to pay this check is in Bartow, and the Brown Shoe Company is in St. Louis. The check is merely an order

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pay at the bank in Bartow, and to be of any use to them its proceeds must be moved to St. Louis.

Up to this point the Bartow Bank has been no party to the shoe transaction—had no interest in it—knew nothing of it in fact. The Brown Shoe Company is not a customer of the Bartow Bank.

Still the fact remains that the check is in St. Louis and the money is in the bank at Bartow. To get this money the Brown Shoe Company must adopt one of two courses. It must go after the money or it must have it sent. The first is impractical, so the second is adopted. But this fact must be made clear and not lost sight of—the duty and burden of getting the money from Bartow to St. Louis is on the Shoe Company. So is the inseparable expense. The bank's duty is confined solely to paying the check at the bank when it is properly presented there.

How does the Brown Shoe Company go about obtaining this money?

It can send the check by mail to Bartow direct and ask that the proceeds be shipped to it by express in currency or that it be remitted in exchange. But that is the most expensive way. Even then, the bank is under no legal obligation to remit it. All it is obliged to do is to count out the money and lay it on the counter.

When you ask another to do a thing he is not obliged to do, it must be either as an accommodation or as a service for which you are willing to pay. It is optional with the party performing the service whether or not he will do it at all—and he may name the terms on which he will perform the service. You may reject the terms if you like, but you cannot accept the service and refuse to pay a reasonable price.

As the most convenient and economical method of collecting the check—that is getting the money or its equivalent from Bartow to St. Louis—the Shoe Company deposits the check with its bank so the bank will collect the check for them through the usual banking channels. The St. Louis bank then becomes the holder of the check. But it holds it in the capacity of collecting agent for the Brown Shoe Company. The check is still subject to the equities between the parties, and Smith can stop payment on the check in the hands of the bank just as he could while it was held by the Shoe Company. When the Shoe Company's rights in the check passed to the bank, so did its duties and obligations pass.

Checks are not money and never can be, for a check is merely an order, subject to cancellation—an executory contract—is not even an assignment of the funds in the bank, and requires presentation and payment to become complete, while the mere delivery of money finishes the transaction.

So we see that the St. Louis bank which now holds Smith's check is under the same duty to go and get the money from the Bartow Bank which the Shoe Company was. Now the St. Louis bank was paid by the Shoe Company for the service and expense of collecting Smith's check in one or both of the following ways:

The St. Louis bank either charged the Shoe Company a straight-out exchange charge, enough or more than enough to pay the ex-

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change to the Bartow Bank, or it gave the Shoe Company what is known as "deferred credit"—that is, it withheld the credit from the Shoe Company's account for four, five or seven days, until the check had been actually paid and the proceeds returned to St. Louis. Or the Shoe Company is required to keep a collected balance with the St. Louis bank, the value of the use of which to the St. Louis bank is sufficient to compensate them for the service and expense. As a matter of fact, the bank probably makes both of these requirements. The St. Louis bank knows how long it is going to take to collect this check and how much it is going to cost, and make their requirements of the Shoe Company accordingly. There can be no question but that the St. Louis bank collects for all the expense and service connected with the collection of the check. That is certain. Under the old plan it divided this with the remitting bank—under proposed "universal par clearance," it keeps it all—of course it favors the plan which makes this possible.

Nor is this an expense to the Shoe Company, because they have included this cost as a part of their overhead and included it in the cost of goods and billed it out in the invoice to Smith, and a part of Smith's own check covers this cost.

The St. Louis bank holding the check proceeds to collect it. That may be through any one of several banking channels. It may send it direct to the Bartow Bank for payment and remittance or it may send it to the same destination through its correspondents and intermediate banks. So far as the Bartow Bank is concerned the result is the same. It receives the check through the mails with request for payment and remittance. Now this remittance by the Bartow Bank takes the form of the bank's check on its correspondent either in the city from which the check was last sent, or upon some reserve city, acceptable to the collecting bank. In any event the Bartow Bank must do these several things which are outside and beyond its contract with Smith to pay the check at the bank:

It must make a record of the check and of where it was received from.

It must draw its own check or draft in settlement, on an expensive form.

It must record that draft on its books, either singly or as a part of a total, at least three and often five times.

It must write a letter and keep a copy of it, in which to endorse its own check, and describe the item.

It must furnish the form on which to write the letter.

It must furnish envelope and stamp and address the envelope.

It must furnish skilled clerical help to do this work, and finally it must have furnished the funds and maintained the account with a correspondent in a reserve city solely for the purpose of checking on it to pay such items.

Now who will say that all of this does not constitute a valuable and expensive service performed by the Bartow Bank? Who was it done for? For the holder of the check of course, and at his request certainly. Neither the last holder of the check, nor any previous holder thereof is a depositor in the Bartow Bank. They are

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strangers to the Bartow Bank. Why then should the attempt be made to force the Bartow Bank to bear the expense of this operation and do this work for strangers without compensation?

This is the heart of the par clearance controversy. The Bartow Bank and others in like situation deny that any authority has the right to force them to perform a valuable and expensive service against their will for this Shoe Company or any other stranger who by chance comes into possession of a check drawn on them. They maintain that the Shoe Company has no more right to demand this free service of them than their officers have to demand free shoes of the Shoe Company. Shoes are the Shoe Company's stock in trade—banking service is the bank's stock in trade, and there is no more equity in confiscating the one for private gain and benefit than the other. No class of institutions gives so much free service as banks, but surely they should be permitted to determine for themselves what services they shall donate and to whom. They are told that they should serve the foreign Shoe Company, which is not their customer, free, and recoup the loss by charging their customer, Smith, for what they do for the Shoe Company.

In other words penalize their customers, whose business supports the bank, for the benefit of the Shoe Company which is not and never will be a patron of the bank; and that the country banks so far have declined to do.

They decline to serve the cities at the expense of their own local communities—and there you have the heart of the par clearance controversy.

They do not believe Congress intended, in passing the Federal Reserve Act, to compel them to forego their rightful revenues and force them to render an expensive and valuable service to the customers of other banks free of charge.

Set-off or Reciprocal Service.

Frequently no direct exchange charge is made because the interchange of business amounts to a substantial set-off. The banks thus mutually related, nevertheless, receive value for the service as real as if a charge was exacted on each transaction. In the absence of such direct charge, banks thus conditioned are described as "remitting at par," and the places in which all the banks there located are so situated are designated "par points." When some of the banks in a place do not remit at par, the individual banks who do remit at par are scheduled on what is known as a "par list" of banks.

The conditions under which, by reason of substantially equalized interchange of business, compensation for the service of transmission of funds is effected through set-off rather than by direct charge, are dependent in large measure upon population of the respective cities, coupled with the amount of interchange of commerce or financial transactions between the respective communities involved. It results that this mutual interchange of business between large cities, especially when located in the same section of the country, is such that compensation by offset is almost universal. But the large num-

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ber of small banks in the rural and relatively sparsely settled districts cannot get a fair return for such service by interchange of business, because the flow of transactions is always inward rather than outward in such localities. Hence it has always been the rule to make specific charge for transmitting funds from such isolated districts to the outside world. This makes it necessary for these "country banks" to maintain balances in financial centers against which to draw to cover remittances, and these drafts are commonly called "exchange," and the charge for the service of remittance has come to be called an exchange charge, though it will be readily seen that the consideration for the charge is the transfer of actual money from one place to another. In order to obtain these exchange deposits and in part payment for the use of the funds thus deposited with them, the city banks collect checks on other banks, whether on par points or not, without charge. This reduces the costs to the country banks of keeping funds at the financial centers as media of exchange and correspondingly increases their profit on exchange charges. So that the compensation received by these country banks for the service of remitting funds has long been an important source of revenue to them, the loss of which would seriously embarrass many of them and render it impossible for many others to make a living, and drive them out of business.

Since these rural communities draw on the outside world for many of the necessities and most of the luxuries of life, payment for which is commonly made through the medium of bank checks rather than in currency, a large percentage of such checks find their way into the hands of the dealers in such commodities. These dealers include the merchants and manufacturers throughout the country who make claims (somewhat extravagant) that they constitute "the commerce" of the country. They seem to have convinced the Federal Reserve Board and banks of the soundness of this claim. We pause to reflect, however, that their "commerce" would rapidly dwindle to the vanishing point did the overburdened "common people" out in the highways and hedges cease buying their wares.

Upon receipt of one of these checks on a country bank, a large percentage of which represents the dealer's profit on the transaction the check covers, the payee deposits it in usual course of business with his city bank (and the aggregate of these checks makes large deposit accounts much sought after by the big city banks, who in turn have to carry their reserves with the Federal Reserve banks), but unless drawn on a bank remitting at par, the dealer's bank deducts exchange charges, which are absorbed in the cost and expense accounts of the dealer. Although the exchange charge is infinitesimal in comparison with the profit on a transaction of any magnitude, the wealthy merchants and manufacturers, whose deposits are much sought after, have convinced the Federal Reserve Board, apparently, that the exchange charge is a burden on "commerce," and some of their subalterns have gone so far as to call it "a vice that must be eradicated."

Since these charges are as legitimate as those made by the express companies or the post-office; or as freight, cartage and transportation of all kinds, it is difficult to see why one should be denominated a

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vicious burden on commerce more than another. Why should the country bank serve without pay any more than the express company, the post-office or the railroad, even though the service is demanded by and rendered to a Federal Reserve bank?

Clearing-house Functions.

Exhibit "A" (App. 18), which is a formal and official letter from the Federal Reserve Board, and Exhibit "B" (App. 20), which is a formal and official letter and declaration from and by the defendant bank, through its governor, each announces a purpose on the part of the Federal Reserve banks, including the defendant bank, to begin to accept checks drawn upon non-member banks and to compel payment thereof at par by the drawees.

The defendant bank undertakes no explanation of the reason for such action, except the general announcement that justice to the member banks and non-member banks who maintain clearing accounts with the Federal banks, and to the various other banks who are remitting at par, requires the defendant bank, in compliance with the intent of the Federal Reserve Act, to begin receiving at par checks and drafts payable on presentation drawn on any bank in the United States, and follows this with a threat to the effect that if par remittance is not consented to, the defendant bank will adopt other methods of collection that will prove "embarrassing, annoying and expensive" to the bank or banks so refusing. However, with each of the letters last mentioned there was enclosed a copy of the letter from the Federal Reserve Board, which is Exhibit "A" to the bill, and therein we find an attempted explanation of the purposes of, and authority and reasons for, the threatened action.

In the last-mentioned letter, the Federal Reserve Board, after calling attention to that part of section 16 which authorizes it, at its discretion, to exercise the functions of a clearing house for the Federal Reserve banks, and to require each Federal Reserve bank to exercise the functions of a clearing house for its member banks, says:

"In accordance with the purpose of this paragraph, the Federal Reserve Board, with the view ultimately of establishing a universal or national system of clearing intersectional balances as well as bank checks and drafts, has established a gold settlement fund through which daily clearings between all Federal Reserve banks are consummated and has also required each Federal Reserve bank to exercise the functions of a clearing house for its member banks. In order, however, to make fully effective its facilities as a clearing house in accordance with the terms of this section, there does not seem to be any doubt that the Federal Reserve bank should not only exercise its obligatory power to receive from member banks checks and drafts upon other member banks, but that it should also exercise its permissive power to receive from member banks any other checks and drafts upon whomsoever drawn, provided that they are payable upon presentation."

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This means that the Federal Reserve Board has construed the statutory permission granted to it to exercise the functions of a clearing house for Federal Reserve banks, and to require each Federal Reserve bank to exercise the functions of a clearing house for its members, as authority to it to establish "a universal or national system" of bank clearing, and therein to dictate and control that feature of the business of all banks, including non-member banks. In short, from a mere statutory permission to establish a clearing-house system for Federal Reserve banks and their members, the Federal Reserve Board deduces and claims authority to control and direct the entire subject of bank clearance in this country, and therein to dictate as to how banks with which it has no connection whatever will carry on a very important feature of their business.

That the statute relied upon does not even remotely suggest authority for such claim and the threatened action based thereon is manifest. The term "clearing house" has a well-defined meaning, which is the same both in law and in the banking business, and about which there is no uncertainty or question.

"A clearing house is an association, the object of which is to effect at one time and place the daily exchanges between the several banks which are members, and the payment of the balance resulting from such exchanges."

National Exchange Bank vs. National Bank of North America, 132 Mass., 149.

Philer vs. Patterson, 168 Penn., 468 (32 Atl., 26).

Crane vs. Fourth Street National Bank, 123 Penn., 556 (26 Atl., 269).

In the very nature of the term it embraces, or applies to only the members of the organization which it designates. The basic idea is an association through which the members thereof make daily settlements each with the other. Congress is presumed to have been cognizant of these well-known matters and to have legislated with that information in mind. The term "clearing-house functions," being free from ambiguity and of well-known meaning, the only effect of the statutory provision under discussion is to authorize the Federal Reserve Board to act as a clearing house, the members of which shall be the Federal Reserve banks, and to require each Federal Reserve bank to act as a clearing house, the members of which shall be its member banks, and under every definition of the term "clearing house," the powers of these several organizations would be limited to the making of daily settlements between the members thereof, and could not embrace any control over settlements or adjustments between member banks and non-member banks.

The jurisdiction, powers and functions of a clearing house so organized can differ in no respect from the jurisdiction, powers and functions of a clearing house organized by agreement between the banks of a particular city, and we do not think that it has ever before been suggested that any clearing house had the slightest thing to do with transactions by its respective members with non-members

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In short, the functions of a clearing house are limited to settlements between its members, and it is in no wise concerned with what may be owing to or by any member by or to any party who is not a member. Unquestionably, the Federal Reserve Board has the power to make daily settlements between the Federal Reserve banks, and each Federal Reserve bank has the power to make daily settlements between its member banks, but here all clearing-house functions cease and no Federal Reserve bank should be concerned, or take action, or seek to exert any control, with respect to the liabilities existing between its member banks and those who are not members.

This effort on the part of the Federal Reserve Board to deduce from a statute clearly limited to granting power to establish a system of clearing for Federal Reserve banks and their members authority to establish "a universal or national system of clearing" is a most forcible illustration of that autocratic tendency which seems to be the order of the day.

Whole Scheme Impracticable.

The whole scheme of the Federal Reserve system on the subject of par clearance is arbitrary, artificial and impracticable. If they accomplish all they claim, the people at large would not be benefited the value of a postage stamp. Exchange would still be charged under one name or another, and the price of no single commodity in the United States would be lowered one penny if every bank in the United States was compelled to submit to the dictation of the Federal Reserve Board and concentrate all the banking resources of the United States in the Federal Reserve system. There is no general economic problem involved. The whole controversy revolves around the selection of the beneficiaries of the system. The beneficiaries would be the large banks in large financial centers and particularly those happening to be located where there is a Federal Reserve bank or a branch thereof. The injury would be distributed widespread throughout the agricultural districts of the United States, and rest upon the shoulders of the small institutions that have not, and cannot have, sufficient capital requirements to become members of the Federal Reserve system even if they wanted to.

Banking Statistics.

(*Excluding in All the Ensuing Figures the Data as to the Mutual Savings and Private Banks*) *as of June* 30, 1921

In order to graphically demonstrate that the present campaign amounts to unjustifiable and destructive warfare against some 10,000 small State banks that are, by reason of the limited capital upon which they operate, forever debarred from membership in the Federal Reserve system, the following statistics as to the banks and banking resources of the United States, taken from the Eighth Annual Report of the Federal Reserve Board for the Year 1921, are referred to.

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The combined resources of all banks in the United States was $42,568,225,000. The total number of these banks was 29,477. Of these, 8,150 were national banks, having $19,630,124,000 aggregate resources or 46 1/10 per cent of the whole. The balance of $22,938,101,000 (53 9/10 per cent) was distributed among 21,32[illegible] State banks.

On that date all of the 8,150 national banks and 1,595 of the State banks were members of the Federal Reserve system. These 1,595 State banks constituted 16.4 per cent of the whole membership, but held $10,009,135,000 of resources, or an average of $6,275,320 each. This shows that only the largest State institutions joined the system. The average resources of the national banks at that time were only $2,408,604 or 38⅜ per cent of the average of State bank members of the Federal Reserve system.

Of the 21,327 State banks, 10,092 (more than one-half) are ineligible for membership in the Federal Reserve system because their capital stock is below the minimum requirements of the Federal Reserve Act.

The total number of eligible State banks is 9,640, of which only 1,595 have joined (16.4 per cent), but this number represents more than 52½ per cent of the combined resources of all eligible State banks.

The average resources of the ineligible State banks is only one-eighth of the general average resources of all member banks and six and one-tenth per cent of the average resources of State banks that have joined the system. In other words, the average resources of the State bank members are sixteen times greater than the average resources of the ineligible State banks.

There are 9,640 eligible State banks that remain out of the Federal Reserve system, being 85 8/10 per cent of all eligibles and having $9,034,347,000 aggregate resources, or an average of $937,17[illegible] each, which is only 12½ per cent below the general average resources of all the State banks in the country.

The general average resources of all member banks in the system is $3,041,484, while the general average resources of national banks is only $2,408,604 (about 21 per cent below the general average). The State bank members have average resources more than twice as great as the general average resources of all members and 2.6 times larger than the general average resources of national banks.

The average resources of national banks are 2.57 times larger than those of eligible non-members and 6¼ times larger than those of ineligible State banks.

The average resources of State bank members are nearly seven times greater than those of eligible non-members and nearly 16 times larger than those of ineligible State banks.

The general average resources of all member banks are 3¼ times larger than those of eligible non-members and nearly eight times larger than those of ineligible State banks.

The following generalizations are deducible from the foregoing statistics:

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1st. The machinery of the Federal Reserve system is not adjustable to the small bank.

2d. The benefits of the system are all on the side of the large institutions and the disadvantages to the small banks are so great as to amount to prohibition.

3d. The disproportion between the relatively small number of banks in the system and their relatively large resources, as compared with the relatively large number of banks outside the system (more than one-half of which are ineligible) and their relatively small resources, shifts the greatest part of the burden and expense of par remittance upon the small banks in the country, and bestows practically all the benefits and advantages of universal par clearance on the large banks in the city.

Unless the continuation of enforced par clearance, brought about by coercive measures throughout the United States, is overturned by injunctive processes of the courts, these 10,092 ineligible State banks will be driven out of business altogether, or, in company with 9,640 other non-member banks, will be doomed to involuntary servitude to the large city banks, constituting the backbone of the Federal Reserve system. However ambitious the Federal Reserve Board may be to draw into the Federal Reserve banks practically all of the banking resources of the United States, such a result could not be reconciled with the constitutional limitations of the power of Congress over State banking institutions. The effort to so concentrate all of the banking resources, whether State or national, into the Federal Reserve system is a plain and inexcusable usurpation of power. If we are to be guided by the lamp of experience and the teachings of history, as related to the Government of the people of the United States, no such usurpation can ultimately succeed, and the instrumentality that attempts it is doomed to certain failure and destruction.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 717.

AMERICAN BANK AND TRUST COMPANY ET AL.

vs.

FEDERAL RESERVE BANK OF ATLANTA ET AL.

It is hereby stipulated by the solicitors of the appellants and appellees in the above stated case that the serving and filing of briefs therein, in accordance with Rule 21, are hereby waived and said briefs may be filed and served at any time before argument under the order advancing said case for assignment on April 23, 1923.

SE IN CENTER

This 27th day of March, 1923.

ALEX. W. SMITH,
Solicitor for Appellants.

ORVILLE A. PARK,
Macon, Georgia;
SMITH, HAMMOND & SMITH,
Atlanta, Georgia;
THEODORE H. SMITH,
Atlanta, Georgia,
Of Counsel.

JOHN W. DAVIS,
Solicitor for Appellees.

RANDOLPH & PARKER,
Atlanta, Georgia,
Of Counsel.

NOTE.—The foregoing data has been assembled in this Appendix and bound up with the brief and argument in one document for convenience of reference by the Justices, and to prevent interruption of the continuity of the argument of counsel.

A. W. S.

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CONTENTS OF APPENDIX.

	Page.
Allegations of the bill and answers thereto covering the gravamen of the suit	1
Amendment to the prayers of the original bill	14
Final decree	15
Circular letter of the Federal Reserve Board explaining the par-clearance campaign (Exhibit A to the bill)	17
Circular letter of defendant reserve bank demanding relinquishment of exchange charges by non-member banks and threatening all insubordinate banks with embarrassment, annoyance, and expense in the methods of collection to be adopted (Exhibit B to the bill)	20
Pertinent extracts from official letters of defendants respecting the campaign for universal par clearance	22
Pertinent replies to such letters	40
Abstract of plaintiff's oral evidence	46
Abstract of defendants' oral evidence	55
Abstract of rejected evidence	61
Section 13, Federal Reserve Act	81
Section 13, original form	81
Section 13 as amended September 7, 1916	81
Section 13 as amended June 21, 1917 (Hardwick Amendment)	81
Section 13, analysis of	82
Letter from Governor Harding to Hon. Carter Glass respecting cost of exchange on Liberty Bond remittances	84
Letter from the Attorney General to Governor Harding as to the provisions of section 13, Federal Reserve Act	84
Regulation "J" of the Federal Reserve Board	86
Definitions and illustrations	89
Set-off or reciprocal service	93
Clearing-house functions	95
Banking statistics	97
Stipulation as to filing	99
Explanatory note	100

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IN THE

Supreme Court of the United States

OCTOBER TERM 1922.

No. 717.

AMERICAN BANK & TRUST COMPANY, et al.,
Appellants,

vs.

FEDERAL RESERVE BANK OF ATLANTA, et al.,
Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR APPELLEES.

HOLLINS N. RANDOLPH,
ROBERT S. PARKER,
Counsel for the Defendants.

JOHN W. DAVIS,
MONTGOMERY B. ANGELL,
Of Counsel.

INDEX.

PAGE

Accumulation of checks.....9, 26
Annoying, expensive and embarrassing methods alleged 11, 29
Argument 13
Attitude of plaintiffs.....11, 36
Change of front alleged..... 35
Charges made by plaintiffs..... 28
Checks payable on presentation, characteristics of 25, 33
Clearing houses, customary function of in collecting checks 15
Coercion and duress..... 26
Collection at par, Federal Reserve Banks so required 17
Collection of checks:
  Legality of proposed method of..... 24
  Three lawful methods of..... 24
Conclusion 45
Conspiracy, allegation of as affecting admissibility of evidence..... 42
Dismissal of the appeal, defendants entitled to 33
Dotham bank incident 11
Evidence:
  Admissibility of acts of other Federal Reserve Banks 39
  Relevancy of acts of other Federal Reserve Banks 40
Exchange acceptable in payment of checks..7, 34

PAGE

Exchange charges:
Amount of per year in case assessed on all out of town checks..... 24
Customary amount of in past..... 4
Federal Reserve Banks unauthorized to pay such 17
Expenses incident to collection through agents, authority for..... 21
Federal Reserve Banks:
Authority of to accept and collect checks drawn on non-member banks..... 14
Independence of one from the other..... 41
Uniting in efforts to establish national par list 43
Federal Reserve Board:
Supervisory capacity of..... 41
Inauguration by of policy of par clearance 4
Publication by of par list..... 8
Findings of court below..... 28
Good faith of defendant bank..... 34
History of the case..... 1
Injunction, unwarranted unless real threatened injury established..... 34
Interrogatories propounded to defendants, answers to properly admitted..... 38
Intervention, petition for properly denied... 36
Just cause or excuse, no want of..... 30
Letter of December 23, 1919..... 11
Loss suffered by plaintiffs cannot affect defendant's rights 32

PAGE

Par clearance:
Advantages of 22
Dictates of sound banking require..... 22
Inauguration of by the Board..... 4
Plan adopted 7
Preliminary measures adopted..... 4
Par Lists 8
Petition of intervention properly denied..... 36
Proceedings on demurrer..... 2
Quincy State Bank incident..... 9
Res inter alios acta as ground for exclusion of testimony 39
Rulings of Trial Court, propriety of..... 36
Section 13 of Federal Reserve Act:
Construction of 15
History of 16
Section 16 of Federal Reserve Act:
Construction of 14
Statement of facts..... 3
Synopsis of argument..... VII
Table of cases..... IV
Testimony showing activities of other Federal Reserve Banks properly excluded..... 39
Textbooks VI
Ulterior motives 10, 28, 33

TABLE OF CASES.

PAGE

Aikens v. *Wisconsin*, 195 U. S. 194.....30, 31
Allis-Chalmers Co. v. *Iron Moulders Union No. 125*, 150 Fed. 155.....27, 32
American Bank & Trust Co. v. *Federal Reserve Bank*, 256 U. S. 350..... 2
American Bank & Trust Co. v. *Federal Reserve Bank*, 269 Fed. 4.....2, 19, 21
American Bank & Trust Co. v. *Federal Reserve Bank*, 280 Fed. 940, 284 Fed. 424....2, 19
Bitterman v. *Louisville, etc., R. R. Co.*, 207 U. S. 205..... 30
Blair v. *Chicago*, 201 U. S. 400, 450..... 21
Brennan v. *United Hatters*, 73 N. J. L. 729, 65 Atl. 165.....30, 31
Brookings State Bank v. *Federal Reserve Bank of San Francisco*, 277 Fed. 430; 281 Fed. 222..... 19
City of New York v. *New York Telephone Co.*, October Term, 1922, decided March 12, 1923, Docket No. 588..... 37
Cogan Co. v. *Hughes*, 145 Ga. 5; 88 S. E. 418 41
Consolidated Gas Co. v. *Newton*, 256 Fed. 238 37
Credits Commutation Co. v. *U. S.*, 177 U. S. 311 37
Donovan v. *Campion*, 85 Fed. 71..... 37
Dunn v. *Bryan*, Ir. R. 7 Eq. 143..... 34
Ex parte Leaf Tobacco Board of Trade, 222 U. S. 578..... 37
Ex parte Cutting, 94 U. S. 14..... 37
Farmers & Merchants Bank v. *Federal Reserve Bank of Richmond*, 183 N. C. 546, 112 S. E. 252.....19, 34

PAGE

Farmers, etc., Bank of Catlettsburg v. *Federal Reserve Bank of Cleveland*, U. S. D. C. E. D. Ky. (unreported) 19

Hitchman Coal & Coke Co. v. *Mitchell*, 245 U. S. 229 .....30, 32

In re Engelhard, 231 U. S. 646 37

In re Penn Development Co., 220 Fed. 222 .. 34

Jefferies v. *Pitts* (Ala.), 75 So. 959 41

Kerbaugh v. *Gray*, 212 Fed. 716 41

MaCauley v. *Tierney*, 19 R. I. 225, 37 L. R. A. 455 .....30, 31, 32

McKee v. *Hughes*, 133 Tenn. 455; 181 S. W. 930 32

Mumford v. *Rock Springs Grazing Ass'n*, 261 Fed. 842 34

National Bank v. *Matthews*, 98 U. S. 621 ... 21

National Fireproofing Co. v. *Mason Builders' Association* (C. C. A.), 169 Fed. 259 27, 30, 32

Palatine Ins. Co. v. *Griffin* (Tex. C. C. App. 1918), 202 S. W. 1014 30

Picket v. *Walsh*, 192 Mass. 572; 78 N. E. 753 .....30, 31

Plant v. *Woods*, 176 Mass. 492, 57 N. E. 1011 .....30, 32

Ricker v. *Railway*, 90 Me. 395; 38 Atl. 338 .. 27

Sargent v. *Ohio & M. R. Co.*, 1 Hardy (Ohio) 52 34

Selma Water Co. v. *City of Selma*, 154 Fed. 138 34

Sharpless Separator Co. v. *Skinner*, 251 Fed. 25 41

S. S. White Dental Mfg. Co. v. *Mitchell*, 188 Fed. 1017 34

PAGE

State v. *Huegin*, 110 Wisc. 189; 85 N. W. 1046 27
Trenton Oilcloth Co. v. *Munroe*, 218 Fed. 370 41
Veazie Bank v. *Fenno*, 8 Wall. 533..... 19
West Va. Trans. Co. v. *Standard Oil Co.*, 50 W. Va. 611; 40 S. E. 591.....30, 32
Whalen v. *Dalashmutt*, 59 Md. 250..... 34

TEXT BOOKS.

Foster: Federal Practice (6th Ed.) §258.... 37
Jones: Evidence, §§135, 140.....40, 41
Reynolds: Stephen's Digest Evid., p. 20 note 6 42
Stark: Evidence (3rd Ed.) 58, 59..... 41
Street: Federal Eq. Prac., Vol. I, §507..... 37
Thralls: The Clearing House..... 15

SYNOPSIS OF ARGUMENT.

PAGE

I.

In proposing to collect checks at par on all banks located within the Sixth Federal Reserve District, the Federal Reserve Bank of Atlanta is acting pursuant to and in furtherance of the express direction of Congress as embodied in the provisions of the Federal Reserve Act, as amended.

(1)

The Federal Reserve Act authorizes the Federal Reserve Banks to accept for collection and to collect any and all checks payable upon presentation when deposited with them for collection 14

(2)

Checks received by Federal Reserve Banks for collection must be collected at par, since the Federal Reserve Banks are not permitted under the terms of the Federal Reserve Act to accept in payment of checks deposited with them for collection an amount less than the full face value thereof 17

PAGE

(3)

The dictates of sound banking require that if the several Federal Reserve Banks, in undertaking the collection of checks payable on presentation at par, are to render satisfactory and efficient service to their member banks, they must be prepared to accept for collection and to collect at par any and all checks deposited with them for collection 22

II.

The method of check collection which the Federal Reserve Bank of Atlanta proposes to adopt is entirely legal both in respect to the means employed and the end in view, and consequently plaintiffs have no grounds for complaint.

(1)

The means to be employed and the ends in view are legal..... 24

(2)

There is no ulterior motive in fact..... 28

(3)

There is no want of just cause or excuse..... 30

III.

The defendants are entitled to a dismissal of this appeal.

(1)

The plaintiffs entirely failed in their proof, either of unlawful methods or ulterior motives 33

PAGE

(2)

The evidence entirely negatives any past or prospective abuse by the defendants of their right to demand payment in cash. The lawful exercise of this undoubted right cannot be forbidden 33

(3)

The defendants cannot be required to submit to any order of injunction merely because it may be framed in accordance with their expressed purposes and is therefore harmless. The decree must declare the very right of the cause 34

IV.

There was no error in the rulings of the Trial Court.

(1)

The Trial Court properly denied the petition for intervention 36

(2)

The Trial Court properly admitted the answers of the defendants to the interrogatories propounded to them under Equity Rule 58 38

(3)

The Trial Court properly excluded the testimony offered purporting to show the activities of other Federal Reserve Banks in other Districts 39

CONCLUSION.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

No. 717.

AMERICAN BANK & TRUST COMPANY, *et al.*,
Appellants,

against

FEDERAL RESERVE BANK OF ATLANTA, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR APPELLEES.

History of the Case.

This is an appeal from a decision of the United States Circuit Court of Appeals for the Fifth Circuit, affirming a decree entered by the District Court of the United States for the Northern District of Georgia on March 25, 1922, denying a petition for an injunction, except as to certain minor matters, against the appellees, defendants below.

These proceedings were instituted by certain so-called country banks created under the laws of the State of Georgia. The bill herein was

filed in January, 1920. A demurrer to the bill was argued orally before the District Court for the Northern District of Georgia in March, 1920, and on April 29, 1920, the District Court entered an order dismissing the complaint for want of equity. That decree was subsequently affirmed by the Circuit Court of Appeals for the Fifth Circuit on November 19, 1920 (269 Fed. 4). Upon appeal to the Supreme Court of the United States, the decree of the District Court was reversed on May 16, 1921, and the case remanded for trial on the merits (256 U. S. 350). An answer was filed on July 5, 1921, and on January 9, 1922, the case came on for trial. Evidence was introduced by both parties, and on March 11, 1922, the District Court filed a written opinion containing its findings of fact and conclusions thereon (280 Fed. 940), which on appeal was affirmed by the Circuit Court of Appeals (284 Fed. 424). The question presented on this appeal is whether the appellants, in view of the evidence submitted at the trial, are entitled to relief at the hands of a court of equity.

When the case was before this Court on demurrer (256 U. S. 350), the Court, in overruling the demurrer, rested upon the specific charge that the defendants intended, in the words of Mr. Justice Holmes, "to accumulate checks upon the country banks until they reached a large amount and then to cause them to be presented for payment over the counter or by other devices detailed to require payment in cash in such wise as to compel the plaintiffs to maintain so much cash in their vaults as to drive them out of business or force them, if able, to submit to the defendants' scheme." This is the one specific

act alleged which this Court condemned and which led Mr. Justice Holmes to remark that "this sort of warfare upon legitimate creations of the States" is not sanctioned by federal statute. This is clearly evidenced by the statement in the paragraph preceding that "to determine whether they are authorized to follow that course it is not enough to refer to the general right of a holder of checks to present them, but it is necessary to consider whether *the collection of checks and presenting them in a body for the purpose of breaking down the plaintiffs' business as now conducted is justified by the ulterior purpose in view.*" (Italics ours.)

The case reduces itself, therefore, solely to a question of motive. Are the defendants inspired by "disinterested malevolence" against the plaintiff banks? Do either their objects or their methods give evidence of a design to inflict gratuitous injury upon the plaintiffs, in default of the plaintiffs' submission to the defendants' will?

Statement of Facts.

The controversy which gave rise to this litigation grew out of an attempt on the part of the Federal Reserve Bank of Atlanta to put into effect the universal collection of checks at par throughout the Sixth Federal Reserve District, which embraces the States of Georgia, Florida and Alabama, and parts of the States of Tennessee, Mississippi and Louisiana. The record shows that for some time past the country banks in the Sixth District have been accustomed to deduct so-called "exchange charges" from the face amount of checks drawn upon them by their depositors

and received through the mails for payment. These "exchange charges" amount to ⅛ or 1/10 of 1% of the face amount of the checks presented, with a minimum of 10 cents per item (R., 138, 141, 150, 168), and ostensibly are exacted to cover the cost of remission (R., 153). The charge in question is entirely distinct from the interest charge assessed by the bank *receiving the check for deposit*, which latter charge is imposed where immediate credit is given the depositor and represents an interest charge on the money advanced during the time the check is in process of collection (R., 181, 312). These interest charges are not involved in this suit.

Some time in June, 1916, the Federal Reserve Board at Washington, in accordance with the directions contained in the provisions of the Federal Reserve Act (C. 6, §13, 38 Stat. 263; amended March 3, 1915, C. 93, 38 Stat. 958; September 7, 1916, C. 461, 39 Stat. 752; and June 21, 1917, C. 32, §§4, 5, 40 Stat. 234, 235), inaugurated a policy of universal par clearance of checks, that is, it directed the several Federal Reserve Banks to act as clearing houses for their member banks and to undertake the collection at par of all checks received for collection (R., 75, 211). The policy of universal par clearance was inaugurated by the Federal Reserve Board at Washington, but the methods by which the plan was to be carried into effect in each district were left entirely to the respective Federal Reserve Bank of that district (R., 205, 209, 296, 301).

Preliminary Measures Adopted.

In accordance with this policy the Federal Reserve Bank of Atlanta undertook to institute the

universal par clearance of checks in the Sixth District. About May or June, 1919, letters were written to all the non-member banks in the Sixth District which theretofore had not agreed to remit at par, in which the advantages of par clearance were courteously pointed out to the bank in question and it was urged to join the vast army of state banks which were then remitting at par. The preliminary measures adopted are set forth in the defendants' answer to Interrogatory No. 63 (R., 211) as follows:

> "The Federal Reserve Board, under the provisions of Sections 13 and 16 of the Federal Reserve Act, directed the Federal Reserve Bank of Atlanta to act as a clearing house for its member banks. Pursuant to this direction and acting in accordance with the provisions of the Federal Reserve Act, the Federal Reserve Bank of Atlanta undertook to collect at par for its member and clearing member banks all checks on banks within the Sixth Federal Reserve District. The non-member banks of the Federal Reserve Bank of Atlanta were advised of the purpose of the Federal Reserve Bank of Atlanta, and were courteously and respectfully requested to remit for checks sent them for collection without the exaction of so-called 'exchange charges', full explanation being made to such banks of the fact that, under Section 13 of the Federal Reserve Act, the Federal Reserve Bank could not pay exchange charges. The banks in question were further advised that, if they would voluntarily remit for checks sent them without exacting 'exchange charges', the Federal Reserve Bank of Atlanta would stand the cost of postage and would absorb the shipping charges, in case they preferred to send currency. They were also invited to open a

clearing account with the Federal Reserve Bank of Atlanta under the provisions of Section 13 of the Federal Reserve Act, as amended, as a result of which they would enjoy the same collection privileges as a regular member bank. A large number of the banks in the Sixth Federal Reserve District which were not members of the Federal Reserve Bank of Atlanta, voluntarily agreed to remit for checks sent them for collection without the exaction of so-called 'exchange charges.' Many of such banks, however, were not willing, for one reason or another, to remit for such checks without exacting so-called 'exchange charges'. In such cases the Federal Reserve Bank of Atlanta was compelled to resort to other lawful methods of collecting such checks, in order to render the required service to its member banks, but before any general plan could be put into effect, the restraining order in this suit was issued."

Thus the defendant bank did everything in its power by courteous and friendly request to persuade the non-member banks in its District to remit at par before considering other methods of collection.

However, as a number of the state banks persisted in refusing to remit at par through the mails, it became incumbent upon the officers and directors of the Federal Reserve Bank of Atlanta, in accordance with what they conceived to be their legal duty, to attempt to collect at par checks drawn on such banks in some other lawful way than by presentation through the mails. Before a definite plan had been decided upon, however, this suit was instituted and a temporary injunction issued, staying the hands of the officers of the bank from further action. Various

methods of presenting the checks for payment at the counter were discussed from time to time, but as there was no real reason for deciding upon a final scheme with the temporary injunction in effect, it is quite natural that the officers were leisurely in reaching their conclusion.

The Plan Adopted.

Subsequently, however, a definite plan was formulated. The plan is set forth in the defendants' Answer to Interrogatory No. 6 (R., 200), as follows:

> "In case a non-member state bank should not be willing to remit in available exchange at par through the mails for checks sent by the Federal Reserve Bank of Atlanta through the mails for payment, the Federal Reserve Bank, in order to collect such checks in the only other method available, would forward the checks as and when received, without accumulation and in the regular course of business, to an agent or agents located in the same town as the bank on which such checks were drawn, or would send one of its own representatives with the checks in question to such town, such agent to be instructed immediately to present the checks across the counter for payment either in the usual exchange at par or in cash for the full amount thereof, at the option of the drawee bank. In case the drawee bank refused to pay such check either in such exchange at par or in cash, the agents were to be instructed to have the check protested for non-payment and thereafter return the check to the Federal Reserve Bank of Atlanta."

The defendants, without waiving the right of collection in cash, a right which pertains to

every holder of a check, have testified that they will be willing to accept at par the same kind of exchange which they accept from banks which voluntarily agree to remit at par, namely, exchange drawn by a solvent bank upon a solvent bank which is collectible at par (R., 182, 183, 186).

The Par List.

The par list is a compilation of the names of cities and towns, checks on banks in which the several Federal Reserve Banks are ready to collect at par (R. 348). In some instances the name of the individual bank is inserted, but in either event the par list is merely a means of announcing that the banks included therein are banks checks on which the Federal Reserve Bank will undertake to collect at par. The par list contains no representation whatever touching the attitude of the listed banks, but refers only to the functions which the Federal Reserve Bank is prepared to perform (R. 288).

The par list is printed and published as one document by the Government Printing Office at Washington, but the names of the cities or banks in each district included within it are furnished by the Federal Reserve Bank of the particular district and can be changed only by and at the direction of the respective Federal Reserve Banks. The Federal Reserve Board at Washington has nothing to do with the preparation of these lists. (R., 179, 288)

Accumulation of Checks.

There is no evidence whatsoever of an accumulation of checks for presentment in a body, or of any intended accumulation. The accumulation of checks means the withholding of checks for a period of time before presentment (R., 181-2). The convergence of checks at one point and the daily presentation thereof in the regular course of business does not and cannot constitute an accumulation of checks within the meaning of that term as used in banking practice. (R., 181-2).

Mr. Monroe of the Quincy State Bank, a witness for the plaintiffs, testified that on February 12, 1920, one Hunter, an agent of the express company, presented to the Quincy State Bank for payment a large number of checks, about one hundred in all and amounting in the aggregate to $27,616.86, and that on the day following another batch of fifty or sixty checks was presented for payment (R., 169). In connection with this incident, however, Mr. Adelson, Deputy Governor of the Federal Reserve Bank of Atlanta, testified (R., 176-7), as follows:

> "The Jacksonville Branch was operating under my direction at that time. I think about January 31st it was when the Jacksonville Bank sent a cash letter to the Quincy State Bank with the explanatory letter from that branch stating that it could not pay exchange, and requesting a remittance at par, but if they were not willing to remit at par to return the items. On February 5th, 1920, I think it was, in a letter signed N. B. Jordan, Cashier of the Quincy State Bank—anyway, three cash letters which had been similarly sent to the Quincy State Bank were returned, which obviously had been an

> accumulation of several days *and which was held up by them.* We had incurred some liability, after they had been held up by that bank by reason of their being in suspense, and when they were returned to the Jacksonville Bank they were instructed to turn them over to the express company for collection without any specific instructions as to how payment was to be made. There was no design to accumulate them for the purpose of embarrassing the Quincy State Bank."

It is obvious that whatever accumulation occurred was occasioned by the action of the Quincy State Bank. Elsewhere in the record, both Governor Wellborn and Mr. Adelson testified explicity that the Federal Reserve Bank of Atlanta never accumulated nor ever intended to accumulate checks (R., 177, 186).

Ulterior Motives.

Nor does the evidence disclose any ulterior motive on the part of the officers or directors of the defendant bank. On the contrary, it is quite evident that both the officers and directors have acted, and intend to act, with the greatest consideration for the welfare and in the interests of the complaining banks. Mr. Tumlin, a witness for the plaintiffs, testified that the officers of the Bank were actuated only by the desire to do their duty and to follow what they believed to be the law (R., 156), while the officers themselves, on their corporal oaths, stated unqualifiedly that their sole and only purpose was to render to their member banks the service of collecting checks at par, as contemplated by the provisions of the Federal Reserve Act (Ans. to Interrogatory No. 62, R., 211).

It appears that in connection with the collection of checks at Dotham, Ala., the Dotham Bank resorted to all kinds of devices to inconvenience the Federal Reserve Bank of Atlanta when called upon to pay checks presented over its counter. Among other things, it got together all sorts of worn-out and torn currency which it used in payment of the checks (R., 184) and after this supply was exhausted, it paid the checks in currency which it indirectly obtained from the Federal Reserve Bank of Atlanta through the medium of a member bank located in Dotham (R., 184). This device was brought to the attention of the directors of the Federal Reserve Bank of Atlanta, yet they voted to continue to supply the member bank with what currency it asked for (R., 63, 184).

The Letter of December 23rd.

As for Governor Wellborn's letter of December 23rd, 1919, attached as "Exhibit B" to the complaint and over which the plaintiffs raised such a storm of protest, it is clear from Governor Wellborn's testimony that he had not the slightest intention to convey any threat, nor did he ever conceive that it would be taken in that sense (R., 195). In fact, he was much surprised and perturbed when the matter was brought to his attention (R., 195).

The Attitude of Plaintiffs.

The real reason for the institution of this suit is the reluctance on the part of the plaintiff banks to forego the exchange charges (R., 93). In or-

der to retain this revenue, they have charged all manner of illegal acts on the part of the defendant bank, apparently with no other purpose than so to tie the hands of the defendant bank that the plaintiffs may be permitted to continue to exact exchange charges. The plaintiffs have refused to agree to remit by mail at par and have elected to stand on their bare legal rights. Having taken that position, they now complain that the Federal Reserve Bank of Atlanta intends to show them no consideration but to go the limit in collecting checks across the counter in order to do them out of a few dollars a year. On the contrary, the evidence discloses that the Federal Reserve Bank of Atlanta has in the past, and proposes in the future, to show them every consideration and even now is prepared to give them the alternative of paying in exchange at par or in cash, rather than stand on its own bare legal rights as holder of checks payable on presentation and demand cash only, a medium which alone can discharge the obligation arising out of a negotiable instrument. In the last analysis, this is what the evidence of record discloses. It is admitted that the exchange charges are borne by the ultimate consumer, the people at large (R., 152). Nevertheless, the plaintiffs insist upon the right to retain such charges in much the same way as the spinners of old clung to their alleged right to employment when the cotton gin first came into being. It is a policy of obstruction, pure and simple; an attempt to exact a charge for a service which in reality is no longer rendered, as shown by numerous letters written by Governor Harding and introduced in evidence by the plaintiffs themselves. (See particularly letter to a United States Senator, dated April 1, 1920, R., 122.)

ARGUMENT.

In proposing to collect checks at par on all banks located within the Sixth Federal Reserve District, the Federal Reserve Bank of Atlanta is acting pursuant to and in furtherance of the express direction of Congress as embodied in the provisions of the Federal Reserve Act, as amended.

Quite apart from the provisions of the Federal Reserve Act, the several Federal Reserve Banks, as banks of reserve and deposit, have authority to accept for collection and to collect at par all checks deposited with them by member banks. Deposits received by banks are largely in the form of checks drawn upon other banks. It is therefore essential to the effective operation of any bank, particularly one acting as a reserve depository as does each Federal Reserve Bank, that it have power to collect checks deposited with it. Such a right has been recognized ever since the introduction of the check as a medium of exchange entirely aside from express provision of law, for a check is of no value as credit or otherwise unless and until it is collected and paid. It follows that all banking institutions, and more particularly those acting as reserve depositories, have authority to receive and collect all checks which are deposited with them, and, having accepted checks for collection, may, as the rightful holder thereof, demand payment for the full face amount without the deduction of any exchange charges, in the absence, of course, of any ulterior motive in so doing.

But, in order that there may be no question as to the existence of this power so far as the Federal Reserve Banks are concerned, Congress has expressly clothed the several Federal Reserve Banks with authority to accept for collection and to collect all checks payable upon presentation, whether drawn upon member or non-member banks, and at the same time has expressly prohibited the Federal Reserve Banks from accepting in payment for such checks an amount less than the full face value thereof.

(1)

The Federal Reserve Act authorizes the Federal Reserve Banks to accept for collection and to collect any and all checks payable upon presentation when deposited with them for collection.

The Federal Reserve Banks, under the provisions of Section 16 of the Federal Reserve Act, as amended, are required, upon the direction of the Federal Reserve Board, to exercise the functions of clearing houses for their member banks. Section 16, as at present drawn, provides in part:

> "The Federal Reserve Board * * * may at its discretion exercise the functions of a clearing house for such Federal Reserve Banks, or may designate a Federal Reserve Bank to exercise such functions, and may also require each such bank to exercise the functions of a clearing house for its member banks."

The Federal Reserve Board has notified the several Federal Reserve Banks that they will be

required to act as clearing houses for their member banks. It is a customary function of a clearing house to collect out of town checks received for clearance and collection and to remit the proceeds to the payee bank, as well as to cancel checks one against another. For years the Boston Clearing House Association has been accustomed to collect out of town checks drawn on all banks throughout New England, whether such banks were members of the Association or not, and the same is true with regard to such clearing houses as those operating in Kansas City, Nashville, Atlanta, Oklahoma City, St. Louis, New York, Richmond, Detroit and several other cities. (See "The Clearing House," by Jerome Thralls, pages 15 *et seq.*)

Moreover, having authorized the Federal Reserve Banks to act as clearing houses for their member banks when directed by the Federal Reserve Board, it is hardly conceivable that Congress intended to withhold from such banks the power to collect out of town checks received for collection, when such a power is so evidently essential to a successful national system of check clearance and collection.

Whatever may be the intention of Congress as contained in Section 16, however, Congress has expressly specified in Section 13 of the Act what checks the several Federal Reserve Banks may accept for collection and credit.

Section 13 of the Federal Reserve Act, as at present drawn provides in part as follows:

> "Any Federal Reserve Bank may receive form any of its member banks, and from the United States, deposits of current funds in lawful money, national bank notes, Federal

> Reserve notes, or checks, and drafts, payable upon presentation, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection, may receive from other Federal Reserve banks deposits of current funds in lawful money, national bank notes, or checks upon other Federal Reserve banks, and checks and drafts, payable upon presentation within its district, and maturing notes and bills payable within its district; or, solely for the purpose of exchange or of collection, may receive from any non-member bank or trust company deposits of current funds in lawful money, national bank notes, Federal Reserve notes, checks and drafts payable upon presentation, or maturing notes and bills: *Provided*, Such non-member bank or trust company maintains with the Federal Reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal reserve bank."

The Act thus empowers the Federal Reserve Banks to receive from their member banks checks and drafts "payable on presentation." The phrase "payable on presentation" is unqualified. In the absence of words of qualification, or any intent to qualify, the authority conferred must include the right to accept checks and drafts drawn on non-member banks as well as upon member and clearing member banks.

The history of the legislation in question shows beyond a shadow of a doubt that this was the intent of Congress in drawing the Act as it appears at present. Originally this paragraph of Section 13 limited the authority conferred to the receipt of "checks and drafts upon solvent member banks." By the amendment of September

7th, 1916, the phrase "upon solvent member banks" was stricken out, so that the amended phraseology, which remains unchanged in this respect at present, contains simply the qualifying phrase "payable upon presentation," and nothing more.

Having a right to receive checks payable upon presentation irrespective of the class of banks upon which such checks are drawn, the Federal Reserve Banks must of necessity, as one of their incidental powers necessary to carrying on the business of banking conferred upon them by Section 4 of the Act, have the right to collect such checks, or otherwise the right to receive would be useless and ineffectual. A check is of no value as credit or otherwise unless and until it is collected and paid. The right to receive and collect checks is a right incidental both to the right to receive deposits and the right to act as a clearing house. All banking institutions, state and national, have universally exercised the right to collect checks as incident to their general banking powers and without any express authority in law. The Federal Reserve Banks are no exception to this general rule.

(2)

Checks received by Federal Reserve Banks for collection must be collected at par, since the Federal Reserve Banks are not permitted under the terms of the Federal Reserve Act to accept in payment of checks deposited with them for collection an amount less than the full face value thereof.

As noted above, the first paragraph of Section 13 authorizes the Federal Reserve Banks to re-

ceive from member banks, among other evidences of indebtedness, checks and drafts payable upon presentation, and soley for the purpose of exchange or of collection to receive from other Federal Reserve Banks checks and drafts payable upon presentation within its district, and solely for purposes of exchange or collection to receive from non-member banks and trust companies checks and drafts payable upon presentation, provided that such non-member banks maintain sufficient balances to offset items in transit, and then continues as follows:

> "*Provided, further*, That nothing in this or any other section of this Act shall be construed as prohibiting a member or non-member bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; *but no such charges shall be made against the Federal Reserve Banks.*" (Italics ours.)

This last clause in italics effectively prohibits the Federal Reserve Banks from permitting the deduction of any discount in the way of "exchange charges" on any and all checks which they may receive for collection, whether such checks are drawn on member banks or clearing member banks, or on non-member banks. A careful analysis of that part of Section 13 quoted above shows that the phrase "no such charges" relates by reference to the term "reasonable charges" in the earlier part of the proviso, *i. e.*,

exchange charges. While the paragraph recognizes the right of member or non-member banks to impose exchange charges *inter sese*, it unqualifiedly prohibibts the Federal Reserve Banks from paying any such charges on any or all checks held by them for collection. This is the interpretation which invariably has been given to the proviso in question by every court which has undertaken to construe its meaning. See *American Bank & Trust Co.* v. *Federal Reserve Bank of Atlanta*, 269 Fed. 4; 280 Fed. 940; 284 Fed. 424; *Brookings State Bank* v. *Federal Reserve Bank of San Francisco*, 277 Fed. 430; 281 Fed 222; *Farmers, etc., Bank of Catlettsburg* v. *Federal Bank of Cleveland*, U. S. D. C. E. D. Ky., opinion rendered October 14, 1922 (unreported); *Farmers, etc., Bank* v. *Federal Reserve Bank of Richmond*, 183 N. C. 546; 112 S. E. 252.

The plaintiffs deny the correctness of such a construction, for, they say, since the Federal Government has no power to control the charges assessed by state banks for services rendered by them, Congress cannot be presumed to have intended the prohibition contained in this proviso to apply to state institutions which have remained outside of the Federal Reserve System. The major premise of this contention will not bear scrutiny. Congress, in the exercise of its undisputed constitutional powers, may unquestionably affect, and directly affect, the revenues of state institutions, and to that extent may and does exercise a form of control over the operation of state agencies. This principle was established many years ago by this court in the state bank-note tax case, *Veazie Bank* v. *Fenno*, 8 Wall, 533, and has been reaffirmed in a long line of cases since. It is clear that the creation of the Federal Re-

serve Banks lies within the undisputed constitutional realm of Congress. Congress may with equal freedom confer powers and prescribe limitations upon these its own creatures. It may as freely say that a Federal Reserve Bank shall not pay exchange charges on checks drawn on nonmember banks deposited with it for collection as say that a Federal Reserve Bank shall accept such checks for collection and collect the same. What effect such a limitation may have upon the revenue of state institutions cannot affect the validity of the limitation. It follows that the presumption for which the plaintiffs contend, namely, that Congress should not be taken to have intended the prohibition to apply against state institutions, has no persuasive force, particularly where, as here, the clear import of the words used does not justify such a restricted and forced interpretation.

It may be urged in the alternative that even if the proviso is not limited in effect as claimed, nevertheless, the proviso must be taken to prohibit a charge only when the Federal Reserve Bank owns for its own account the check held, and that if the Federal Reserve Bank is acting solely as agent for collection, the prohibition does not apply. But this interpretation does clear violence to the language used and to the intention of Congress as expressed in the Act. Sections 13 and 16, as amended, quite obviously contemplate a system of check clearance and collection. What Congress had in mind was the collection of member banks' checks through the Federal Reserve Banks. Thus, the clause in Section 13, "but no such charges shall be made against the Federal Reserve Banks", must be taken to apply whether

the particular check is owned by the Federal Reserve Bank for its own account or whether as agent for collection.

But, if the proviso in question is to be construed as the Federal Reserve Bank of Atlanta maintains, then, the plaintiffs contend, it must preclude a Federal Reserve Bank from incurring any expense whatever incidental to the collection of checks by agents at the counter. The limitation, however, obviously applies only to the technical exchange charges. From the context, it cannot refer to the expenses incurred in making collections at the counter. The Federal Reserve Banks unquestionably have authority to meet all necessary expenses incidental to their operations, and as the incurring of expense involved in the presentation of checks across the counter is not expressly prohibited by the Federal Reserve Act, the authority to incur such expense necessarily exists under the general authority to incur expenses in carrying on operations. Even if such authority did not exist, however, third parties, such as the plaintiffs, have no cause for complaint of such action. *American Bank & Trust Co.* v. *Federal Reserve Bank of Atlanta*, 269 Fed. 4, 10-11; *National Bank* v. *Matthews*, 98 U. S. 621; *Blair* v. *Chicago*, 201 U. S. 400, 450.

(3)

The dictates of sound banking require that if the several Federal Reserve Banks, in undertaking the collection of checks payable on presentation at par, are to render satisfactory and efficient service to their member banks, they must be prepared to accept for collection and to collect at par any and all checks deposited with them for collection.

Having the necessary authority, it is of course open to the Federal Reserve Banks to exercise such authority at will. There are, however, cogent considerations of policy which impel the Federal Reserve Banks to undertake the universal par collection of checks.

In the United States, the use of the check as a medium of exchange, both locally and at distant points, has grown enormously in recent years on account of its convenience and safety in settling business transactions. By the use of the check, debts may be readily settled at distant points expeditiously and without the danger and expense incident to the shipment of currency. Yet unless the check is universally freed from the imposition of exchange charges, which are in effect nothing more than an unwarranted tax upon its free circulation, the full usefulness of the check as a medium of exchange cannot be attained. With certain banks insisting upon an exchange charge while others will remit for the full amount of a check, a merchant who receives an out of town check in payment for goods sold must face the risk of undergoing a loss in the form of exchange charges, which are often impossible to foresee and

which are certainly very inconvenient and annoying when imposed. On the other hand, if all checks are universally collectable at par, the commercial interests of the country may rest assured that a check for $1,000 is worth $1,000 and not $999, or some lesser amount. Uniformly in the value of a circulating medium is essential to its full usefulness as such.

Universal par clearance will insure to the check a ready acceptance everywhere. Checks on small towns will be just as available as checks on large centers. Every check, irrespective of the bank or locality upon which it is drawn, should, in the interest of the entire country, represent available funds in the full amount of its face value. If the check collection system set up by Congress under the Federal Reserve Act is to meet properly the needs for which it was created, each Federal Reserve Bank must be prepared to accept for collection and to collect at par checks drawn upon all banks within its district. The value of the collection service rendered by any clearing-house is directly proportionate to the number of banks, checks on which may be collected through it. Even among the protesting non-member banks themselves, the desirability of universal par clearance is recognized. In a letter dated December 30, 1919, to the Federal Reserve Bank of Atlanta, offered in evidence by the plaintiffs (R., 88), Mr. E. M. Moore, President of the Merchants and Farmers Bank of Roanoke, Ala., said:

> "To get down to real facts, we are ready to remit at par for our checks when we can clear everything at par, * * *. There is no doubt but that every check in this country should be remitted at par, and I trust to see this in effect soon."

Moreover, the imposition of exchange charges constitutes a serious and unwarrantable burden upon the commerce of the country as such. It has been estimated that the amount of exchange charges which the commerce of the country would have to bear in case the usual exchange charges were assessed upon all out of town checks would amount in a year, in round figures, to some $135,000,000 (R., 124-5). The dictates of sound banking and far seeing policy clearly require that such a condition as this should not be allowed to continue, as it most assuredly will unless the par clearance plan of the Federal Reserve Bank is upheld.

II.

The method of check collection which the Federal Reserve Bank of Atlanta proposes to adopt is entirely legal both in respect to the means employed and the end in view, and consequently plaintiffs have no ground for complaint.

(1)

The means to be employed and the ends in view are legal.

There are only three ways in which the holder of a check, whether an individual or a corporation, may lawfully and properly collect it, (1) he may present it in person over the counter of the drawee bank for payment; (2) he may forward it to an agent more conveniently located geographically for the purpose of presentation

through that agent to the drawee bank over its counter for payment; or (3) he may forward it through the mails direct to the drawee bank for payment and remission through the mails in cash or exchange.

The third method is the method which the defendants customarily adopt in collecting checks. Only in cases where the drawee banks themselves compel the Federal Reserve Bank of Atlanta to adopt one of the other two methods on account of their refusal to remit through the mails at par does the Federal Reserve Bank of Atlanta propose to collect checks by presentation at the counter. Under the circumstances, this is the only course open to it if it is to render the service which the Federal Reserve Act contemplates.

The defendants emphatically maintain that they, as the lawful holder of checks received for collection and credit, would be acting entirely within their legal rights if they should insist upon payment in cash only when presenting checks across the counter, in the absence, of course, of any ulterior motive to injure or coerce the banks in question; particularly when they are driven so to present such checks by the refusal of the drawee banks themselves to remit in satisfactory exchange through the mails. A check payable on presentation, as the term denotes, is a negotiable instrument payable at sight and is dischargeable only by the payment of money. In receiving a check for collection and credit the defendant bank becomes the lawful holder thereof and acquires all the rights incident to ownership. As such the defendant bank, like any other holder of a negotiable instrument, has a right to insist that the check be discharged in the only way in which

it legally can be discharged, namely, by the payment of legal tender. It is this obligation which the drawee bank foresaw that it would be required to meet when it voluntarily accepted the deposit of the drawer of the check, and it is an obligation which the drawee bank must be prepared to meet when the check is properly presented to it for payment.

Out of consideration for the non-member banks, however, the defendants do not propose to insist upon their full legal rights in the premises, but rather to give to the drawee bank the alternative of paying in satisfactory exchange at par or in cash. While the defendants contend that they may legally demand cash only, nevertheless, the legality of the plan which they propose to adopt in this district must be tested in the light of the particular acts contemplated.

Under this plan, checks drawn upon non-member banks will be forwarded, *as and when received, without accumulation and in the regular course of business*, to an agent located in the town in which the bank upon which the check is drawn is located, or the check will be turned over to one of the representatives of the defendant bank, who will proceed to present the check across the counter for payment in full, either in satisfactory exchange or in cash. If payment at par is refused, the checks will be protested for nonpayment and returned to the owner thereof. The sole purpose contemplated is to establish universal par clearance throughout the Sixth Federal Reserve District, a course of action which Congress has expressly sanctioned.

There is no possible element of coercion or duress in the acts proposed. No discrimination

will be made between banks which willingly agree to remit at par through the mails and those which refuse so to remit at par. In either case, the Federal Reserve Bank of Atlanta stands ready and willing to accept satisfactory exchange or cash in payment of its cash items presented for payment. The fact that an objecting non-member bank, for some reason of its own, refuses to pay in satisfactory exchange, and so is under the necessity of paying in cash, is not the affair of the Federal Reserve Bank of Atlanta; nor can any coercion or duress be spelled out of this action.

Nor will the exercise of a right, the result of which may compel a third party to forego certain profits which it has been accustomed to make, amount to coercion or duress. *Allis-Chalmers Co. v. Iron Moulders Union No. 125*, 150 Fed. 155, 171; *National Fireproofing Co.* v. *Mason Builders Assn.* (C. C. A.), 169 Fed. 259; *State* v. *Huegin*, 110 Wisc. 189, 85 N. W. 1046; *Ricker* v. *Railway*, 90 Me. 395, 38 Atl. 338.

In *Ricker* v. *Railway, supra*, an old case, perhaps, but one which shows how deeply rooted this principle is in our law, and one which excellently illustrates the point in question, the proprietors of a hotel had been accustomed to provide stage transportation to all patrons from a railroad junction several miles away to the hotel. Subsequently, a railroad was built between these two points and a station established near the hotel. It was held that the hotel proprietors had no cause of action against the railroad for the loss of patronage; that the railway was exercising an undoubted right in extending its tracks as it did; and that the fact that the hotel people were compelled as a consequence to forego the profits de-

rived from their stage did not give them a cause of action. Similarly, the fact that the plaintiff banks must forego exchange charges under the proposed plan of check collection will not make the acts unlawful.

(2)

There is no ulterior motive in fact.

The plaintiffs charge (1) an accumulation of checks until the aggregate is a large amount and the sending of special messengers to demand payment in currency; (2) generally, "financial violence, fear, intimidation and oppression"; (3) the returning of checks drawn on non-assenting banks as dishonored before being presented for payment; (4) derogatory notations on such checks affecting the credit of the drawee bank; and (5) slander or attacks upon the credit or standing of non-member banks.

It is not deemed necessary to review the evidence of record in detail. It is sufficient to say that there is not a scintilla of evidence in the case substantiating any of the foregoing charges. The Trial Court specifically found this to be the fact. It said in part (R. 350):

> "6. In the inauguration of its par clearance system, I find that the Federal Reserve Bank of the Atlanta District was not inspired by any ulterior purpose to coerce or injure any non-member bank which refused to remit at par. Specifically, I find that the charge that the Federal Reserve Bank at Atlanta would accumulate checks upon country or non-member banks until they reach a large amount, and then cause them to be presented for payment over the counter, so

as to compel the plaintiffs to maintain so much cash in their vaults as to drive them out of business, as an alternative to agreeing to remit it at par, is not sustained by the evidence.

7. I find the evidence insufficient to sustain any charge in the bill that the Federal Reserve Bank was acting illegally or exercising any right it had so as to oppress or injure the plaintiff banks."

In this regard the Circuit Court of Appeals said (284 Fed. 424, 426):

> "The record before us does not warrant the setting aside of either of those findings. We do not think that the evidence adduced justified the granting of any of the prayed-for relief which was denied by the decree appealed from."

These findings of fact in the opinion of the Trial Court are incorporated in the 6th, 7th and 8th paragraphs of the decree (R. 351-2).

The plaintiffs have raised a storm of protest over certain alleged statements with regard to "annoying, expensive and embarrassing" methods of collection. If a depositor in one of the plaintiff banks should draw a check on his bank for $100,000 and present that check for payment across the counter, its payment would no doubt be annoying, expensive and embarrassing to the drawee bank, yet such a fact would certainly not excuse the drawee bank from paying the check. This is a chance which every bank must foresee in accepting deposits. The mere fact that a certain course of action may prove annoying, expensive and embarrassing does not neces-

sarily mean that such a course of action is unlawful, nor that the party proposing to adopt such a course of action is impelled by any ulterior motive.

(3)

There is no want of just cause or excuse.

It may be that under the modern law of torts acts otherwise lawful may be rendered unlawful by the existence of malice in law. Malice in law is quite distinct from bad motive or specific intent to injure. It means nothing more nor less than the absence of just cause or excuse. *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229; *Bitterman* v. *Louisville, etc., R. R. Co.*, 207 U. S. 205, 223; *Aikens* v. *Wisconsin*, 195 U. S. 194, 204; *National Fireproofing Co.* v. *Mason Builders Association* (C. C. A.), 169 Fed. 259, 265; *Pickett* v. *Walsh*, 192 Mass. 572, 78 N. E. 753; *Plant* v. *Woods*, 176 Mass. 492, 57 N. E. 1011; *Brennan* v. *United Hatters*, 73 N. J. L. 729, 65 Atl. 165; *W. Va. Transportation Co.* v. *Standard Oil Co.*, 50 W. Va. 611, 624, 40 S. E. 591, 597; *McCauley* v. *Tierney*, 19 R. I. 225, 37 L. R. A. 455; *Palatine Ins. Co.* v. *Griffin* (Tex. C. C. App. 1918), 202 S. W. 1014.

In *Hitchman Coal & Coke Co.* v. *Mitchell*, *supra* Mr. Justice Pitney said:

> "As Bowen, L. J., justly said in the Mogul SS. case, L. R., 23 Q. B. Div. 613, 'Intentionally to do that which is calculated in the ordinary course of events to damage, and which does, in fact, damage another in that other

> person's property or trade, is actionable if done without just cause of excuse'. And the intentional infliction of such damage upon another, without justification or excuse, is malicious in law."

In *McCauley* v. *Tierney*, *supra*, the Court said in part:

> "Injury, however, in its legal sense, means damage resulting from a violation of a legal right. It is this violation of a legal right which renders the act wrongful in the eye of the law and makes it actionable. If, therefore, there is a legal excuse for the act, it is not wrongful even though damage may result from its performance."

Whether just cause or excuse exists in a given case depends upon the specific facts in the particular case. As Mr. Justice Holmes expressed it in *Aikens* v. *Wisconsin*, *supra* (p. 204):

> "It has been considered that, *prima facie*, the intentional infliction of temporal damage is a cause of action, which, as a matter of substantive law, whatever may be the form of pleading, requires a justification if the defendant is to escape. *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598, 613; S. C. (1892) A. C. 25. If this is the correct mode of approach it is obvious that justifications may vary in extent according to the principle of policy upon which they are founded, and that while some, for instance, at common law, those affecting the use of land, are absolute, *Bradford* v. *Pickens*, (1895) A. C. 587, others may depend upon the end for which the act is done."

It is clear, for instance, that business competition as such negatives malice in law. *Brennan* v. *United Hatters*, *supra*; *Picket* v. *Walsh*, *supra*;

Plant v. *Woods, supra; W. Va. Transportation Co.* v. *Standard Oil Co., supra.* Similarly, just cause or excuse exists where the acts complained of are done legitimately in the furtherance of the right to bargain for one's labor. *Allis-Chalmers Co.* v. *Iron Moulders Union No. 125, supra; National Fireproofing Co.* v. *Mason Builders' Assn., supra.* Nor will malice be imputed where the acts complained of are for the public good, even though the plaintiff may be injured thereby, *McKee* v. *Hughes*, 133 Tenn. 455, 181 S. W. 930.

The Federal Reserve Bank of Atlanta, in attempting to put into effect the plan proposed, is simply carrying out the will of Congress and endeavoring to institute a banking reform in the interest of the public at large. It can hardly be said that steps taken pursuant to an act of Congress and in an endeavor to carry out its will are done without just cause or excuse, particularly when the interests of the general public will be so evidently furthered by the institution of the proposed course of action.

The mere fact that some loss may be occasioned as a result of the execution of the plan does not negative the existence of just cause or excuse. *Hitchman Coal & Coke Co.* v. *Mitchell, supra; Allis-Chalmers Co.* v. *Iron Moulders Union No. 125, supra; National Fireproofing Co.* v. *Mason Builders Association, supra; MaCauley* v. *Tierney, supra.*

III.

The defendants are entitled to a dismissal of this appeal.

(1)

The plaintiffs entirely failed in their proof either of unlawful methods or ulterior motives.

It is unnecessary to repeat what has heretofore been said as to the state of the evidence on these points.

(2)

The evidence entirely negatives any past or prospective abuse by the defendants of their right to demand payment in cash. The lawful exercise of this undoubted right cannot be forbidden.

As stated heretofore, a check payable upon presentation is a negotiable instrument which is dischargeable only by the payment of money. An injunction enjoining the Federal Reserve Bank of Atlanta from presenting checks received for collection over the counter of the drawee bank and demanding cash would directly violate not only the contract right which the Federal Reserve Bank of Atlanta possesses as holder of the check, but also the contract right of the drawer of the check, and would thus render a negotiable instrument non-negotiable.

The attempt of the country banks, so-called, to accomplish this result by legislation has broken down in North Carolina and may be expected to

do so elsewhere. See *Farmers & Merchants Bank* v. *Federal Reserve Bank*, 183 N. C. 546, 112 S. E. 252, now before this Court for review on writ of certiorari, Docket No. 823.

(3)

The defendants cannot be required to submit to any order of injunction merely because it may be framed in accordance with their expressed purposes and is therefore harmless. The decree must declare the very right of the cause.

There is no suggestion in the evidence that the plan which the defendants propose to adopt will not be adhered to. Under the plan proposed the objecting non-member banks will be given the same privileges in the matter of exchange as are given to member banks (R., 182, 183, 186). There is not the slightest ground for questioning the good faith of the defendant bank. An order of injunction should not be made merely because the party complaining fears that he may be injured at some future time. *Sargent* v. *Ohio M. R. Co.*, 1 Hardy (Ohio) 52; *Mumford* v. *Rock Springs Grazing Assn.*, 261 Fed. 842; *In re Penn Development Co.*, 220 Fed. 222, 224-5. An injunction can issue only where an actual case of threatened injury has been made out. *Selma Water Co.* v. *City of Selma*, 154 Fed. 138, 142; *Whalen* v. *Dalashmutt*, 59 Md. 250.

Neither is there any reason for granting an injunction because the party against whom the injunction will run will not be prejudiced or hampered by its prohibitive force. *Dunn* v. *Bryan*, Ir. R. 7 Eq. 143; *S. S. White Dental Mfg. Co.* v.

Mitchell, 188 Fed. 1017. In such a case the defendant has a right to a dismissal of the complaint.

The plaintiffs, in the court below, laid some stress upon an alleged change of front on the part of the defendants with regard to the proposed methods of check collection. Plaintiffs apparently maintain that in the answer the defendants admitted an intention to demand cash and cash only, and that not until the answers to the interrogatories were filed did the defendants express willingness to accept drafts at par in lieu of cash.

With all due respect, we desire to point out that the defendants' answer specifically denied the allegations charging intended demands for payment in cash only. Paragraphs 46, 49 and 50 of the complaint (R., 15, 16, 17) allege that the defendants intend to require payment in currency when presenting checks for collection over the counter. This allegation the defendants denied in paragraph 46-A of their answer (R., 35), while in paragraphs 49-A and 50-A thereof it is explicitly stated that the defendants' only purpose in presenting checks for payment across the counter will be to collect such checks in the regular course of business (R., 36, 37). As the receipt of available exchange at par may be upon occasion as satisfactory for purposes of check collection as the receipt of cash, the answer cannot be construed as an admission of an intention to demand cash only. At the trial, question arose as to the issue raised in this connection. It was then that the defendants, without waiving their unquestionable legal right to payment in currency, offered the amendment of January 12, 1922, in order to

clear up any possible ambiguity as to their intentions. Prior to filing the answer, the question of the methods contemplated was not raised, since the case went up on a demurrer to the bill.

When offered an opportunity to remit at par by mail or express at the expense of the Federal Reserve Bank of Atlanta, the plaintiffs have peremptorily refused, and have elected to stand upon their naked legal rights in so doing. When the Federal Reserve Bank proposes to resort to the only method of collection remaining to it and demand payment in full over their counters, the plaintiff banks object and insist that the Federal Reserve Bank shall accept something less than the full amount or return the check to its origin. In short, although it is their own refusal to remit by mail which drives the Federal Reserve Bank to their counters, the plaintiffs would have this insistence upon their alleged right to deduct exchange, on the one hand, wipe out *all* right of the Federal Reserve Bank to collect, on the other.

IV.

There was no error in the rulings of the Trial Court.

(1)

The Trial Court properly denied the petition for intervention.

During the trial of the case a petition for intervention was filed by some seven State banks, all of which are located in districts other than the Sixth District, asking that they be made parties

plaintiff to the suit. This petition the Court denied.

Intervention under Section 37 of the New Equity Rules (1912) must be predicated upon an "interest in the litigation" in question, and there can be no "interest" in an equity suit unless it may be said that the decree entered will directly affect the interest of the petitioners. *Consolidated Gas Company* v. *Newton*, 256 Fed. 238 (affirmed C. C. A. 260 Fed. 1022 and remanded for dismissal 253 U. S. 219), citing and following *Donovan* v. *Campion* (C. C. A.), 85 Fed. 71, and Street: Federal Equity Practice, Vol. I, Sec. 507; see also, Foster: Federal Practice (6th Ed.), Sec. 258. Any decree which may be entered in this case can affect only banks located in the Sixth Federal Reserve District; consequently it cannot be said that the intervening petitioners, located as they are in districts other than the Sixth Federal Reserve District, have an "interest" in the litigation herein.

Furthermore, the so-called "right" to intervene lies entirely within the discretion of the trial court. *City of New York* v. *New York Telephone Company*, October Term, 1922, Docket No. 588, decided March 12, 1923; *Consolidated Gas Co.* v. *Newton, supra; In re Engelhard*, 231 U. S. 646; *Ex parte Leaf Tobacco Board of Trade*, 222 U. S. 578; *Credits Commutation Company* v. *U. S.*, 177 U. S. 311, 317; *Ex parte Cutting*, 94 U. S. 14. There is nothing in the record to show that this discretion was abused. The ruling of the trial court refusing to grant the petition of intervention should not be disturbed.

(2)

The Trial Court properly admitted the answers of the defendants to the interrogatories propounded to them under Equity Rule 58.

Of the written interrogatories propounded by the plaintiffs to the defendants under Equity Rule 58, numbers 1 to 316 inclusive, were addressed jointly to the four individual defendants, while interrogatories numbers 317 to 352 were addressed specifically to the individual defendant whose answer was desired. The defendants, under their individual oaths, made answer jointly to each of the interrogatories addressed to them jointly (R. 198, 276). The plaintiffs object to the admission of these joint answers in evidence upon the grounds (1) that the answers were joint and not several, (2) that Rule 58 required each of the defendants to answer the questions propounded severally, and (3) that the answers of each of the defendants should have been separately signed and filed by him.

Neither the spirit nor the letter of Rule 58 requires that interrogatories propounded to several persons jointly be answered separately in separate documents. The rule prescribes:

> "Each interrogatory shall be answered separately and fully, and the answers shall be in writing under oath, and signed by the party or corporate officer interrogated."

In other words, each question propounded must be answered separately and fully. There is nothing in the rule which precludes joint answers to interrogatories propounded jointly, so long as each question is answered separately. A require-

ment such as that for which the plaintiffs contend would be most cumbersome and require unnecessary duplication. Where, as here, the information asked for is equally in the possession of the persons interrogated, and their answers naturally are identical, it cannot be considered that the rule requires useless repetition in a separate set of answers for each individual. In this connection, the Circuit Court of Appeals said (R., 478):

> "What the quoted provision forbids is the making of one answer a response to more than one interrogatory. It does not forbid several persons to whom an interrogatory is propounded joining in the making of one separate answer thereto. The provision does not require the duplication or multiplication of answers to an interrogatory when the parties interrogated desire to make the same answer thereto."

At the trial, the defendant Wellborn and the defendant Adelson both testified on the stand that they accepted the answers to the interrogatories propounded to them as their individual and corporal statements as to the facts of the case, and adopted them as their sworn testimony (R., 177, 186). These answers in any event are now properly a part of the evidence in the case for all purposes.

(3)

The Trial Court properly excluded the testimony offered purporting to show the activities of other Federal Reserve Banks in other districts.

At the trial the plaintiffs tendered certain testimony, both oral and in the form of written

depositions, to show certain alleged acts done by other Federal Reserve Banks in other districts in putting into effect part clearance in those districts, contending that such testimony was admissible as establishing the methods which the defendant bank intended to adopt in collecting checks at par in the Sixth District. The defendants objected to the admission of such testimony on the ground that it was *res inter alios acta*, and the Court excluded it. There was no error in so doing.

It is elementary that the admissibility of evidence depends upon its relevancy to the issues raised by the pleadings, i. e., to the matter in dispute between the parties in controversy. Whenever testimony does not, naturally and logically, tend to establish a fact in issue, it is irrelevant and should be excluded. *Jones: Evidence*, Sec. 135. The complaint in the instant case alleges that the defendant bank intends to do certain acts within its district which will injure the plaintiff banks. The defendants deny that they intend to do any acts within the Sixth District of which the plaintiffs can legally complain. Thus the issue presented by the pleadings is the legality of the defendants' proposed acts within the Sixth District, as such acts may affect the plaintiffs. The plaintiffs do not complain of acts by the defendant bank in other districts, nor of acts by other Federal Reserve Banks within the Sixth District. The matter in dispute is confined to an alleged threatened wrong by the defendant bank to the plaintiff banks arising from threatened acts within the Sixth District.

On such an issue, testimony of what other Federal Reserve Banks did in other districts is clearly

irrelevant. It is a cardinal rule of evidence that a party cannot be affected by the words or acts of others with whom he is in no way connected and for whose doings he is in no way responsible. *Sharpless Separator Co.* v. *Skinner* (C. C. A.), 251 Fed. 25; *Trenton Oil Cloth etc. Co.* v. *Munroe* (C. C. A.), 218 Fed. 370; *Kerbaugh* v. *Gray* (C. C. A.), 212 Fed. 716; *Cogan Co.* v. *Hughes*, 145 Ga. 5, 88 S. E. 418; *Jeffries* v. *Pitts* (Ala.), 75 So. 959; *Jones: Evidence*, Section 140. As was said by a well known authority on evidence:

> "It would be manifestly unjust to admit (acts of third parties), since the conduct of one man under certain circumstances or towards certain individuals, varying as it will necessarily do according to the motives which influence him, the qualities he possesses and his knowledge of the character of those with whom he is dealing, can never afford a safe criterion by which to judge of the behavior of another man similarly situated." *Stark: Evidence*, 3rd Ed., 58, 59.)

The several Federal Reserve Banks are entirely independent, one from the other. They are distinct and separate corporations, each with its own board of directors and executive officers. Each has exclusive jurisdiction over its own district. One bank is not responsible for, nor has it any control over, the operations or activities of the other banks. The Federal Reserve Board has supervisory power over all the twelve Federal Reserve Banks, but the Federal Reserve Act in Section 4 thereof expressly provides that each Federal Reserve Bank "shall be conducted under the supervision and *control* of a board of directors". (Italics ours.) Thus, each bank is supreme

in its own province, subject only to the supervision of the Federal Reserve Board. Under these circumstances these twelve banking corporations are as separate and distinct one from the other as any other corporations. What the Federal Reserve Bank of Boston does in the Boston district has no probative force in determining what the Federal Reserve Bank of Atlanta intends to do in the Atlanta district. The words of the English text writer Stephens are directly in point:

> "You are not to draw inferences from one transaction to another which is not specifically connected with it merely because the two resemble each other. They must be linked together by the chain of cause and effect in some assignable way before you can draw your inference." (*Reynolds: Stephens Dig. Ev.*, p. 20, Note 6.)

But the plaintiffs rely upon the allegation of conspiracy between the several Federal Reserve Banks, as set forth in the amended bill of complaint, to link up the activities of other banks with those of the defendant bank. In the first place, there is not a scintilla of evidence in the record to establish the existence of such a conspiracy. The Federal Reserve Board, acting pursuant to the provisions of the Federal Reserve Act, inaugurated a general policy of par clearance. The entire testimony of record, however, goes to show that the execution of that policy in each district rested in all its details exclusively with the individual Federal Reserve Bank (R. 205, 209, 296, 301), and that there was no common plan or agreement whatsoever between the several banks to use the same methods of collection (R. 201, 205). The element of conspiracy is entirely lacking.

But the plaintiffs point to the statement made by one of the defendants in a letter, in which it was said, "The twelve Federal Reserve Banks are uniting in their efforts to bring about the establishment of a national par list, and rapid strides are now being made in that direction." This statement certainly cannot warrant the conclusion that the Federal Reserve Banks have entered into a conspiracy to injure non-member banks throughout the country at large. It is only natural that every one of the twelve banks should endeavor to establish universal par clearance within its respective district when that policy was inaugurated by the Federal Reserve Board and they were directed to carry it out. If the mere concurrent execution of the policy of universal par clearance constitutes a conspiracy among the several Federal Reserve Banks, then every policy promulgated by the Board and carried out by the several banks must constitute a conspiracy. Such a conclusion is, of course, absurd. In fact, as the Circuit Court of Appeals said in the prior proceedings on demurrer (269 Fed. 4, 11):

> "The Federal Reserve Banks of other districts have no power to act upon the petitioners or the intervenors. Their jurisdiction in that respect is confined to their own districts. Being without power to injure the complaining banks, they could not be members of a conspiracy against such banks."

But even if a conspiracy could be said to exist between the several Federal Reserve Banks, the acts of Federal Reserve Banks in other districts directed against non-member banks in those districts would not be admissible to establish the intended acts of the defendant bank within the

Sixth District. Non-member banks in the Sixth District cannot be injured by the methods of check collection in the Eighth District, nor can non-member banks in the Eighth District be injured by the methods of collecting checks employed by the defendant bank in the Sixth District. Acts of other banks affecting totally different complainants are not relevant on the issue here, even in the event of a conspiracy.

This is not the case of a common plaintiff suing for a tort in State A, and offering in evidence the acts of a co-conspirator in State B. There the relevancy rests upon the logical sequence that if a conspirator defrauds the plaintiff in State B, a co-conspirator will attempt to defraud the same plaintiff in a similar manner in State A. The instant case does not present this situation, for the persons injured (that is, the non-member banks in different districts) are entirely unconnected in interest, one with the other. The fact that a conspirator has acted in a certain manner toward X is not legally relevant on an issue as to how a co-conspirator will act toward Y. As the Circuit Court of Appeals very pertinently said when the case was before it on demurrer (269 Fed. 4, 12):

> "That other Federal Reserve Banks had taken coercive steps against state banks in their districts to enforce the par clearance policy, as charged on hearsay information in the amended bill, has no bearing on the cause of action relied upon by appellants in this case."

The allegation of conspiracy adds nothing to the plaintiffs' contentions.

Conclusion.

In conclusion, we respectfully submit that no error was committed by the Court below and that the appeal should be dismissed.

Respectfully submitted,

HOLLINS N. RANDOLPH,
ROBERT S. PARKER,
Counsel for Defendants.

JOHN W. DAVIS,
MONTGOMERY B. ANGELL,
Of Counsel.

Office Supreme Court, U. S.
FILED
MAR 16 1923
WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1922.

No. 717.

AMERICAN BANK AND TRUST COMPANY, *et al.*,
Appellants,

vs.

FEDERAL RESERVE BANK OF ATLANTA, *et al.*,
Appellees.

MOTION AND PETITION TO ADVANCE.

HOLLINS N. RANDOLPH,
ROBERT S. PARKER,
Counsel for Appellees.

JOHN W. DAVIS,
MONTGOMERY B. ANGELL,
of Counsel for Appellees.

Supreme Court of the United States

OCTOBER TERM, 1922.

AMERICAN BANK AND TRUST COMPANY, *et al.*, Appellants, against FEDERAL RESERVE BANK OF ATLANTA, *et al.*, Appellees.	No. 717.

MOTION TO ADVANCE.

SIRS:

PLEASE TAKE NOTICE that upon the annexed petition and upon the transcript of record filed herein the undersigned will move this Court at the October Term, 1922, thereof, to be held in the Capitol at the City of Washington, District of Columbia, on the 15th day of March, 1923, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order directing that the argument in this case be advanced and that the same be set down for a day certain to be fixed by the Court.

Dated, New York, March 13, 1923.

Yours, &c.,

HOLLINS N. RANDOLPH,
ROBERT S. PARKER,
Counsel for Appellees.
Healy Building,
Atlanta, Ga.

4

JOHN W. DAVIS,
MONTGOMERY B. ANGELL,
Of Counsel for Appellees.
15 Broad Street,
New York City.

To:
ALEXANDER W. SMITH,
Solicitor for Appellants.
1111 Hurley Wright Building,
Washington, D. C.

ORVILLE A. *PARK*, Macon, Ga.,
SMITH, HAMMOND & SMITH, Atlanta, Ga.,
5 THEODORE H. SMITH, Atlanta, Ga.,
Of Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES 7

OCTOBER TERM, 1922.

AMERICAN BANK AND TRUST COMPANY, *et al.*, Appellants, against FEDERAL RESERVE BANK OF ATLANTA, *et al.*, Appellees.	No. 717.

PETITION ON MOTION TO ADVANCE CASE. 8

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of the appellees, Federal Reserve Bank of Atlanta, *et al.*, respectfully shows as follows:

I. This case comes before this Court pursuant to an appeal taken by the appellants herein, American Bank and Trust Company, *et al.*, from a decision of the United States Circuit Court of Appeals for the Fifth Circuit affirming a decree 9 entered in the District Court of the United States for the Northern District of Georgia on March 25, 1922, denying a petition for injunction, except as to certain minor matters, against the appellees herein, defendants below.

II. It involves the right of the Federal Reserve Bank of Atlanta, acting under and in pursuance of the provisions of the Federal Re-

10 serve Act, to undertake to collect at par within its District all checks deposited with it, whether such checks are drawn upon so-called member banks or non-member banks. These proceedings were instituted by certain so-called country banks created under the laws of the State of Georgia. The bill was filed in January, 1920. A demurrer was entered and the demurrer was argued before the District Court in March, 1920. On April 29, 1920, the District Court dismissed the complaint for want of equity. That decree was subsequently affirmed by the United States Circuit Court of Appeals for the Fifth Circuit on November 19,
11 1920 (269 Fed. 4), but upon appeal to the Supreme Court of the United States, the decree of the District Court was reversed on May 16, 1921, and the case remanded for trial on the merits (256 U. S. 350). An answer was duly filed and on January 5, 1922, the case came on for trial. After a full hearing the District Court entered a decree dismissing the complaint (280 Fed. 940), which on appeal was affirmed by the United States Circuit Court of Appeals for the Fifth Circuit (284 Fed. 424). The plaintiffs below thereupon took an appeal to this Court from the decision of the Circuit Court of Appeals. This appeal involves an interpretation of the Federal
12 Reserve Act, particularly Sections 13 and 16 thereof, and the right of the Federal Reserve Bank, pursuant to the provisions of the Federal Reserve Act, to undertake to collect at par all checks deposited with it for collection regardless of the class of banks upon which such checks are drawn.

III. The questions involved are of great public interest and national importance. It is essen-

tially a test case. The case involves, not alone 13
the interests of the particular parties to this litigation, but the interests of the people of the United States in general. Certain aspects of the questions presented have already been before this Court on the demurrer proceedings, and at that time the case was advanced in view of its public importance and the seriousness of the questions involved. The questions raised have been the subject of litigation since early in January, 1920, and it is essential that the controversies growing out of this litigation should be settled expeditiously and without delay.

WHEREFORE your petitioners respectfully pray 14
that this honorable court will grant the motion to advance this case on the calendar of this honorable Court.

HOLLINS N. RANDOLPH,
ROBERT S. PARKER,
Counsel for Appellees,
Healey Building,
Atlanta, Ga.

JOHN W. DAVIS,
MONTGOMERY B. ANGELL,
Of Counsel for Appellees,
15 Broad Street, 15
New York City.

AMERICAN BANK & TRUST COMPANY ET AL. *v.* FEDERAL RESERVE BANK OF ATLANTA ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 717. Argued April 30, May 1, 1923.—Decided June 11, 1923.

1. It is within the statutory powers of a federal reserve bank to collect checks on state banks within its district, which are not members of the federal reserve system, or affiliated with it through establishment of an exchange balance, and which refuse to assent to clearance at par, provided the checks be payable on presentation and can in fact be collected consistently with the legal rights of the drawees without paying an exchange charge. P. 646.
2. Loss of income resulting to country banks from the exercise of this right without malice or coercion, is *damnum absque injuria*. P. 648.

284 Fed. 424, affirmed.

APPEAL from a decree of the Circuit Court of Appeals affirming a decree made by the District Court after final hearing, in a suit brought by numerous state banks against the Federal Reserve Bank of Atlanta and its officials. The case was here before on a decree sustaining a demurrer to the bill. 256 U. S. 350.

Mr. Alexander W. Smith, with whom *Mr. Orville A. Park* and *Mr. Theodore H. Smith* were on the brief, for appellants.

Mr. John W. Davis, with whom *Mr. Hollins N. Randolph, Mr. Robert S. Parker* and *Mr. Montgomery B. Angell* were on the brief, for appellees.

Mr. Justice Brandeis delivered the opinion of the Court.

After the decision in this case reported in 256 U. S. 350, an answer was filed which denied, in large part, the allegations of the bill. Then, by an amended answer, the Federal Reserve Bank disclaimed any intention of demanding payment in cash, when presenting checks at the banks, and averred its willingness to accept payment in drafts, either on the drawee's Atlanta correspondent or on any other solvent bank, if collectible at par. The District Court heard the case upon the evidence. It found that the Federal Reserve Bank was not inspired by any ulterior purpose to coerce or to injure any non-member bank which refused to remit at par. It found that the evidence was insufficient to sustain any charge that the Federal Reserve Bank was exercising its rights so as to injure or oppress plaintiff banks. And it found, specifically, that the evidence did not sustain the charge that the Federal Reserve Bank accumulated checks upon non-member country banks until they reached a large amount and then caused the checks to be presented for payment over the counter, in order to compel plaintiff banks to keep in their vaults so much cash that they would be obliged either to agree to remit at par or to go out of business. With regard to publication on the par list of the names of non-assenting banks, the District Court held that the evidence did not justify a finding that such publication was made in order to injure or oppress plaintiff

banks. But it was of opinion that insertion of their names might lead to the belief that the plaintiff banks had agreed to remit at par. An injunction was, therefore, granted against inclusion of their names on the par list. The relief sought was in all other respects denied. The decree left the Federal Reserve Bank free to publish that it would make collection at par of checks upon any bank in any town, thus including those in which plaintiffs had their respective places of business. 280 Fed. 940. These findings were approved by the Circuit Court of Appeals; and the decree was affirmed. 284 Fed. 424.

The case is here on an appeal taken by the plaintiffs. The evidence was conflicting. No adequate reason is shown why the concurrent findings of fact made by the two lower courts should not be accepted by us. *Luckenbach* v. *McCahan Sugar Refining Co.*, 248 U. S. 139, 145. Whether on the undisputed facts plaintiffs were entitled to additional relief is the main question for decision. In order to decide that question it is necessary to consider the course of business formerly prevailing and the changes wrought by the attempt to introduce universal par clearance and collection of checks through the federal reserve banks.

A large part of the checks drawn on country banks are sent to payees who reside in places other than that in which the drawee bank is located. Payment of such a check is ordinarily secured through the payee's depositing it in his local bank for collection. This bank ordinarily used, as the means for presenting the check to the drawee, a clearing house and/or correspondent banks. Formerly when the check was so presented, the drawee ordinarily paid, not in cash, but by a remittance drawn on his balance in some reserve city or by a credit with some correspondent. This process of collection yielded to the country bank a two-fold profit. It earned some profit by the small service charge called exchange, which

it made for the remittance or the credit. And it earned some profit by using the depositor's money during the period (sometimes weeks) in which the check was travelling the often circuitous route, with many stops, from the payee's bank to its own, and also while the exchange draft was being collected. These avenues to profit are, in large measure, closed by the federal reserve banks' course of action. These banks do not pay any exchange charges to the drawee. And their superior facilities so shorten the time required to collect checks that the drawee bank's balances available for loans are much reduced. Largely because of the fact that the reserve banks thus make the collection without any deduction for exchange, most checks on country banks are now routed through the reserve banks. Although there is, as the District Court found, no intentional accumulation or holding of checks in order to embarrass, the advantages offered by the federal reserve banks have created a steady flow in increased volume of checks on country banks so routed. That the action contemplated by the Federal Reserve Bank will subject the country banks to certain losses is clear.[1] In order to protect them from the resulting loss it would be necessary to prevent the federal reserve banks from accepting the checks for collection. For these banks cannot be compelled to pay exchange charges or to abandon superior facilities.

The contention is that the injunction should issue, because it is *ultra vires* the federal reserve banks to collect checks on banks which are not members of the system or affiliated with it, through establishing an exchange balance, and which have definitely refused to assent to clearance at par. It is true that Congress has created in the reserve banks institutions special in character, with lim-

[1] It is said that introduction of a universal system of par clearance and collection of checks through the federal reserve banks would bring compensatory advantages to the country banks.

ited functions and with duties and powers carefully prescribed. Those in respect to the collection of checks are clearly defined. The original act (Act of December 23, 1913, c. 6, § 13, 38 Stat. 251, 263) authorized the reserve banks to "receive from any of its member banks, and from the United States, deposits of . . . checks . . . upon solvent member banks, payable upon presentation; or, solely for exchange purposes, may receive from other Federal reserve banks deposits of . . . checks . . . upon solvent member or other Federal reserve banks, payable upon presentation."

By the amendment to § 13 of September 7, 1916, c. 461, 39 Stat. 752, the class of checks receivable was extended to "checks payable upon presentation within the district." By the amendment to § 13 of June 21, 1917, c. 32, § 4, 40 Stat. 232, 235, the class of banks from which checks might be received "solely for collection" was extended. By the latter amendment the facilities offered by the federal reserve banks were made available also to such non-members as became affiliated with the federal reserve system by establishing the required balance "to offset the items in transit." It is true, also, that in practice this amendment might result in excluding checks on particular banks from the class collectible through the federal reserve banks. For it enacted the clause which prohibits payment of exchange charges by federal reserve banks. And as this prohibition would prevent reserve banks from using the usual channels in making collection of checks drawn on those country banks which insist upon exchange charges, the reserve bank might find it impossible or unwise, as a matter of banking practice, to collect such checks at all. But the class of checks to which the reserve bank's collection service might legally be applied, was left by the amendment as those "payable upon presentation within its district." Wherever collection can be made by the federal reserve bank, without paying exchange, neither

the common law, nor the Federal Reserve Act precludes their undertaking it; if it can be done consistently with the rights of the country banks already determined in this case. 256 U. S. 350.

Federal reserve banks are, thus, authorized by Congress to collect for other reserve banks, for members, and for affiliated non-members, checks on any bank within their respective districts, if the check is payable on presentation and can in fact be collected consistently with the legal rights of the drawee without paying an exchange charge. Within these limits federal reserve banks have ordinarily the same right to present a check to the drawee bank for payment over the counter, as any other bank, state or national, would have. For § 4, (38 Stat. 251, 254) provides that the federal reserve banks shall have power:

"Seventh. To exercise by its board of directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this Act and such incidental powers as shall be necessary to carry on the business of banking within the limitations prescribed by this Act."

The findings of fact negative the charges of wrongful intent and of coercion. The Federal Reserve Bank has formally declared that it is willing, when presenting checks, to accept in payment a draft of the drawee bank upon its Atlanta correspondent or a draft upon any other solvent bank—if collectible at par. Country banks are not entitled to protection against legitimate competition. Their loss here shown is of the kind to which business concerns are commonly subjected when improved facilities are introduced by others, or a more efficient competitor enters the field. It is *damnum absque injuria*. As the course of action contemplated by the Federal Reserve Bank is not *ultra vires*, we need not consider whether lack of power, if it had existed, would have entitled plaintiffs to relief. Compare *National Bank* v. *Matthews*, 98 U. S. 621; *Blair* v. *Chicago*, 201 U. S. 400, 450.

Some minor objections are urged. The Federal Reserve Bank of Atlanta serves, directly, only the Sixth Reserve District, which includes Georgia. It is contended that the decree should be reversed because the District Court refused to allow the intervention as plaintiffs of banks located outside of that district; because that court refused to admit evidence of the activities engaged in by other federal reserve banks in other districts under the approval of the Federal Reserve Board; and because the court admitted certain joint answers to interrogatories propounded under Equity Rule 58. We cannot say that the trial court abused the discretion vested in it, or erred in so ruling.

Affirmed.